

***United States Court of Appeals
for the Second Circuit***

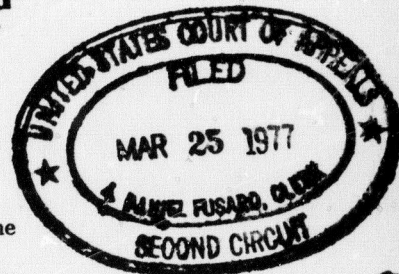


APPENDIX

77-7045
~~77-7645~~

United States Court of Appeals

For the Second Circuit.



MARGIE L. UPTON, Individually and as Administratrix of the
Estate of LARRY L. UPTON, deceased, et al.,
Plaintiffs-Appellants,
against

THE DEPARTMENT OF CIVIL AVIATION OF THE EMPIRE OF
IRAN and THE EMPIRE OF IRAN,
Defendants-Appellees.

ON APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE SOUTHERN
DISTRICT OF NEW YORK

JOINT APPENDIX.

KREINDLER & KREINDLER
Attorneys for Plaintiffs-Appellants
99 Park Avenue
New York, N. Y. 10016
(212) 687-8131

ROGERS & WELLS
Attorneys for Defendants-Appellees
200 Park Avenue
New York, N. Y. 10017
(212) 972-7000

PAGINATION AS IN ORIGINAL COPY

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* The Clerk for this Court responsible for filing Joint Appendices indicated, after an examination of the printer's proof, that portions of the Joint Appendix were illegible. All of the illegible portions of the Joint Appendix were retyped with the exception of the Articles and Proof of Incorporation of Iran Air, annexed as Exhibit "D" to the Plaintiffs' Affidavit reproduced infra at pages 122-174. These documents, obtained from the C.A.B., are in Farsi with an English translation. Counsel for plaintiffs and defendants have agreed to have retyped only those portions of the Articles and Proof of Incorporation directly relevant to the issues on appeal. The complete Articles and Proof of Incorporation of Iran Air are included in the Record on Appeal.

1a

UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT.

-----X

MARGIE L. UPTON, Individually and as Administratrix
of the Estate of Larry L. Upton, deceased, et al.,

Plaintiffs-Appellants,

-against-

THE DEPARTMENT OF CIVIL AVIATION OF THE EMPIRE OF IRAN
and THE EMPIRE OF IRAN,

Defendants-Appellees.

-----X

DOCKET ENTRIES.

Date	Proceedings
1976	
6-30	Filed complaint and issued summons.
7-22	Filed pltfs. affdvt. of Wylene Carter of service of summons and complaint upon defts as indicated.
7-28	Filed defts. memorandum of law in support of motion to quash service and motion to dismiss for lack of jurisdiction.
7-28	Filed defts. affdt. and notice of motion to quash process of service, ret. on: Aug. 11, 1976 at 10 am in Rm. 2201.
8-11	Filed pltfs. affdvt. in opposition to the Empire of Iran and the Dept. of Civil Aviation of the Empire of Iran's motion to quash and to dismiss.
8-12	Filed pltfs. memorandum of law in opposition to defts. motion to quash service and to dismiss.

DOCKET ENTRIES

Date	Proceedings
9-09	Filed pltfs. affdvt. and notice of motion to consolidate 75 CIV 6084, 75 CIV 6085 and 76 CIV 2914 for pre-trial purposes -- ret. 9-23-76 (filed in 75 CIV 6084 CMM)
9-13	Filed summons and Marshals returns - served: deft. c/o The Permanent Mission of Iran to the United Nations -- UNABLE TO SERVE. deft. c/o Ms Khorvash Office of the Legal Counsel - Consulate General of Iran by Ms Khorvash on 7-8-76 deft. c/o Iran National Airlines Corporation by John Doe on 7-8-76.
9-20	Filed affdvt. of Pahlavi Foundation in opposition to motion to consolidate 75-6084, 6085 and 76-2914.
12-20	Filed OPINION #45451...This Court can find no basis for exercising its jurisdiction over Iran and the Department based on a tortious act which occurred wholly in Iran. Accordingly, plaintiffs action must be dismissed. -- Metzner, J. m/n
1977	
1-17	Filed pltfs. notice of appeal to the U.S.C.A. for the Second Circuit from the Opinion and Order of 12-17-76. Mailed copies to Rogers and Wells

COMPLAINT.

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT NEW YORK

-----x
MARGIE L. UPTON, Individually and
as Administratrix of the Estate of
LARRY L. UPTON, deceased, and as
Mother and Natural Guardian of KARI
LEE UPTON, KIM MARIE UPTON and JODI
LYNN UPTON, minors,

-and-

76 Civ. ()

JERRIE NIMTZ and JUDY NIMTZ, Indi-
vidually, and RITA MAE GLANTZ, as
Administratrix of the Estate of
MICHAEL JOHN NIMTZ, deceased,

-and-

COMPLAINT

PLAINTIFFS DEMAND
A TRIAL BY JURY

ALFRED E. CASWELL,

Plaintiffs,

-against-

THE DEPARTMENT OF CIVIL AVIATION
OF THE EMPIRE OF IRAN

-and-

THE EMPIRE OF IRAN,

Defendants.

-----x
Plaintiffs, by their attorneys, KREINDLER &
KREINDLER, complaining of the defendants, respectfully
allege:

COMPLAINT

A FIRST CLAIM FOR THE WRONGFUL
DEATH AND SURVIVAL DAMAGES ARISING FROM THE DEATH OF LARRY L. UPTON, DECEASED, BASED ON NEGLIGENCE AND STRICT LIABILITY

1. Jurisdiction exists pursuant to 28 U.S.C. §1332(a)(2) in that each plaintiff was and still is and each decedent was at the time of his death a citizen and resident of various States of the United States; the first named defendant is an agency of the Empire of Iran with its principal offices in the Empire of Iran, and which has offices and does business in the United States in this District; the second named defendant is a foreign state which has offices and does business in this District; and the amount in controversy exceeds the sum of TEN THOUSAND (\$10,000) DOLLARS, exclusive of interest and costs.

2. Prior to the commencement of the within action, plaintiff Margie L. Upton was duly and properly appointed Administratrix of the Estate of Larry L. Upton, deceased, and is duly qualified and presently acting in said capacity.

3. On and prior to December 5, 1974, defendants owned, maintained, controlled, operated and assisted in and supervised the construction and subsequent modification of

COMPLAINT

certain facilities at the Mehrabad International Airport, Tehran, Iran including the main hall of the said airport terminal building.

4. On December 5, 1974, the roof of the main hall of the said building collapsed.

5. On December 5, 1974, Larry L. Upton, Michael John Nimtz and Alfred E. Caswell were within the main hall of the said building for the purpose of embarking on their intended flights when the said roof collapsed.

6. As a result of the said collapse, Larry L. Upton and Michael John Nimtz sustained severe personal injuries which resulted in their deaths.

7. Said collapse was caused by the negligence of the defendants in that the defendants negligently, carelessly and recklessly owned, operated, maintained and controlled, failed properly to assist in or supervise the construction of and failed adequately to inspect the said building and its subsequent modification; defendants were otherwise negligent; and defendants are strictly liable in that the said building was a public building and said passengers were within the said building as members of the public to whom the defendants owed an absolute duty of care.

COMPLAINT

8. Larry L. Upton, deceased, is survived by his wife, plaintiff Margie L. Upton, and their three infant children, Kari Lee Upton, Kim Marie Upton and Jodi Lynn Upton, and as a result of the said injuries and death they have sustained damages including loss of support, services, consortium, parental care and guidance, the prospect of inheritance of future accumulations, funeral and burial expenses and other fair and just damages.

9. Prior to his death, decedent consciously suffered great physical pain and mental anguish in contemplation of impending death.

10. By reason of the premises, plaintiff Margie L. Upton, individually and as Administratrix of the Estate of Larry L. Upton, deceased, and as Mother and Natural Guardian of decedent's three surviving infant children has been damaged in the sum of ONE MILLION FIVE HUNDRED THOUSAND (\$1,500,000) DOLLARS.

A SECOND CLAIM FOR THE WRONGFUL
DEATH AND SURVIVAL DAMAGES ARISING FROM THE DEATH OF MICHAEL
JOHN NIMTZ, DECEASED, BASED ON
NEGLIGENCE AND STRICT LIABILITY

11. Plaintiffs Jerrie Nimtze, Judy Nimtze, and Rita Mae Glantz repeat and reallege each and every allegation contained in paragraphs "1", "3" through "7", and "9".

COMPLAINT

12. Prior to the commencement of the within action, plaintiff Rita Mae Glantz was duly and properly appointed Administratrix of the Estate of Michael John Nimtz, deceased, and is duly qualified and presently acting in said capacity.

13. Michael John Nimtz is survived by his mother, plaintiff Jerrie Nimtz, and his wife, plaintiff Judy Nimtz, and as a result of the said injuries and death they have sustained damages including loss of support, services, consortium, the prospect of inheritance of future accumulations, funeral and burial expenses and other fair and just damages.

14. By reason of the premises, plaintiffs Jerrie Nimtz, Judy Nimtz and Rita Mae Glantz have been damaged in the sum of ONE MILLION ONE HUNDRED THOUSAND (\$1,100,000) DOLLARS.

A THIRD CLAIM FOR THE PERSONAL
INJURY OF ALFRED E. CASWELL, BASED
ON NEGLIGENCE AND STRICT LIABILITY

15. Plaintiff Alfred E. Caswell repeats and realleges each and every allegation in paragraphs "1", "3" through "5" and "7".

16. As a result of the said collapse Alfred E. Caswell sustained severe personal injuries.

COMPLAINT

17. By reason of the said injuries, plaintiff has suffered and continues to suffer great physical pain and anguish, was seriously and permanently injured and has incurred and continues to incur medical and other expenses and was otherwise damaged.

18. By reason of the premises, plaintiff Alfred E. Caswell has been damaged in the sum of TWO HUNDRED FIFTY THOUSAND (\$250,000) DOLLARS.

WHEREFORE, Plaintiff Margie L. Upton, Individually and as Administratrix of the Estate of Larry L. Upton, deceased, and as Mother and Natural Guardian of Kari Lee Upton, Kim Marie Upton and Jodi Lynn Upton, minors, demands judgment against defendants in the sum of ONE MILLION FIVE HUNDRED THOUSAND (\$1,500,000) DOLLARS on the FIRST CLAIM; and

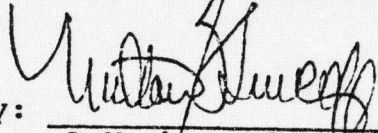
Plaintiffs Jerrie Nimtz and Judy Nimtz, Individually, and Rita Mae Glantz, as Administratrix of the Estate of Michael John Nimtz, deceased, demand judgment against defendants in the sum of ONE MILLION ONE HUNDRED THOUSAND (\$1,100,000) DOLLARS on the SECOND CLAIM; and

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COMPLAINT

Plaintiff Alfred E. Caswell demands judgment against defendants in the sum of TWO HUNDRED FIFTY THOUSAND (\$250,000) DOLLARS on the THIRD CLAIM, together with the interest, costs and disbursements of this action.

KREINDLER & KREINDLER
Attorneys for Plaintiffs

By: 

A Member of the Firm
99 Park Avenue
New York, New York 10016
(212) 687-8181

PLAINTIFFS' AFFIDAVIT OF SERVICE OF SUMMONS AND COMPLAINT.

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT NEW YORK

-----x

MARGIE L. UPTON, Individually and
as Administratrix of the Estate of
LARRY L. UPTON, deceased, ET AL.,

76 Civ. 2914 (CMM)

Plaintiffs,

-against-

AFFIDAVIT OF SERVICE
UPON DEFENDANTS

THE DEPARTMENT OF CIVIL AVIATION
OF THE EMPIRE OF IRAN and THE
EMPIRE OF IRAN,

Defendants.

-----x

STATE OF NEW YORK)
)ss.:
COUNTY OF NEW YORK)

WYLENE Y. CARTER, being duly sworn, deposes and says:

1. I am Secretary to Milton G. Sincoff, member
of the firm of KREINDLER & KREINDLER, attorneys for the plain-
tiffs herein.

2. On June 30, 1976, the Summons and Complaint in
this action was filed with the Clerk of the United States
District Court for the Eastern District of New York. Copies
were delivered to the United States Marshall for that Court

PLAINTIFFS' AFFIDAVIT OF SERVICE OF SUMMONS AND COMPLAINT

for service upon the following agents of the Department of Civil Aviation of the Empire of Iran and the Empire of Iran [hereinafter DEP'T OF CIVIL AVIATION & EMPIRE OF IRAN].

- a. Iran National Airlines Corporation
345 Park Avenue
New York, New York 10022
- b. The Consulate General of Iran
630 Fifth Avenue, Room 900
New York, New York 10020
- c. The Permanent Mission of Iran
to the United Nations
622 Third Avenue, 34th Floor
New York, New York 10019

3. On June 30, 1976, I mailed copies of the said Summons and Complaint in secured postage-paid envelopes together with letters addressed to the following representatives of defendants DEP'T OF CIVIL AVIATION & EMPIRE OF IRAN:

- a. Mr. A. Moshaveghzadeh
Office of the Legal Counsel
The Imperial Embassy of Iran
3005 Massachusetts Avenue, N.W.
Washington, D.C. 20008
- b. The Honorable Sadeq Ahmadi
Minister of Justice
The Empire of Iran
Tehran, Iran

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PLAINTIFFS' AFFIDAVIT OF SERVICE OF SUMMONS AND COMPLAINT

Attached hereto are copies of those letters, the registered mail return receipt from the Embassy of Iran and a letter from Legal Counsel for the Embassy of Iran acknowledging receipt of copies of said Summons and Complaint.

Wylene Y. Carter
Wylene Y. Carter

Sworn to before me this

22nd/day of July , 1976

Nancy Ann Gammino
Public Notary

NANCY ANN GAMMINO
Notary Public, State of New York
No. 41-1303005
Qualified in Queens County
Certificate filed in New York County
Commission Expires March 1, 1979

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PLAINTIFFS' AFFIDAVIT OF SERVICE OF SUMMONS AND COMPLAINT

June 29, 1976

Mr. Moshaveghzadeh
Office of the Legal Counsel
The Imperial Embassy of Iran
3005 Massachusetts Avenue, N.W.
Washington, D.C. 20008

Re: Margie L. Upton v. The Department
of Civil Aviation of the Empire
of Iran, et. al.

Dear Sir:

Enclosed is a copy of a Summons and Complaint which has been filed in the United States District Court for the Southern District of New York.

The filing of the within Summons and Complaint commenced an action against the Department of Civil Aviation of the Empire of Iran and The Empire of Iran for damages arising from the deaths of Larry L. Upton and Michael John Nimitz, and the serious injury of Alfred E. Caswell, as the result of the collapse of the roof of the Main Hall of the Terminal Building of the Mehrehab Airport, Tehran, Iran on December 5, 1974. My law firm represents Mr. Caswell, an American citizen, and the Estates of Larry L. Upton and Michael John Nimitz, both of whom were American citizens at the time of their deaths.

Copies of the within Summons and Complaint have been delivered to the United States Marshal for the Southern District of New York who will effect service by personally serving the following agencies of the Empire of Iran and the Department of Civil Aviation of the Empire of Iran:

PLAINTIFFS' AFFIDAVIT OF SERVICE OF SUMMONS AND COMPLAINT

1. Iran National Airlines Corporation
345 Park Avenue
New York, New York 10022
2. The Consulate General of Iran
630 Fifth Avenue, Room 900
New York, New York 10020
3. The Permanent Mission of Iran
to the United Nations
622 Third Avenue, 34th Floor
New York, New York 10019

In addition, a copy of the within Summons and Complaint has been sent via registered mail, return receipt requested, to the Honorable Sadeq Ahmadi, Minister of Justice, The Empire of Iran, Tehran, Iran.

We respectfully suggest you forward the enclosed to your American counsel.

Very truly yours,

KREINDLER & KREINDLER

By: Milton G. Sincoff

MGS/ml
Enclosures
Sent via Registered Mail -
Return Receipt Requested

PLAINTIFFS' AFFIDAVIT OF SERVICE OF SUMMONS AND COMPLAINT

June 29, 1976

Honorable Sadeq Ahmadi
Minister of Justice
The Empire of Iran
Tehran, Iran

Re: Margie L. Upton v. The Department
of Civil Aviation of the Empire
of Iran, et. al

Honorable Sir:

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345 Park Avenue
New York, New York 10022

PLAINTIFFS' AFFIDAVIT OF SERVICE OF SUMMONS AND COMPLAINT

2. The Consulate General of Iran
630 Fifth Avenue, Room 900
New York, New York 10020
3. The Permanent Mission of Iran
to the United Nations
622 Third Avenue, 34th Floor
New York, New York 10019

In addition, a copy of the within Summons and Complaint has been sent via registered mail, return receipt requested, to Mr. Moshaveghzadeh, Office of the Legal Counsel, The Imperial Embassy of Iran, 3005 Massachusetts Avenue, N.W., Washington, D.C. 20008.

We respectfully suggest you forward the enclosed to your American counsel.

Very truly yours,

KREINDLER & KREINDLER

By: Milton G. Sincoff

MGS/ml
Enclosures
Sent via Registered Mail -
Return Receipt Requested

PLAINTIFFS' AFFIDAVIT OF SERVICE OF SUMMONS AND COMPLAINT

PS Form 3811, Jan. 1975

● **SENDER:** Complete items 1, 2, and 3.
Add your address in the "RETURN TO" space on reverse.

1. The following service is requested. (check one).
☒ Show to whom and date delivered. 15¢
☒ Show to whom, date, & address of delivery. 35¢
☐ RESTRICTED DELIVERY.
 Show to whom and date delivered. 65¢
☐ RESTRICTED DELIVERY.
 Show to whom, date, and address of delivery 85¢

2. ARTICLE DESCRIBED *Yusef Moshaveghzadeh*
Office of the Legal Counsel
THE Imperial Embassy of Iran
3005 Massachusetts AVE NW
Washington, D.C. 20008

3. ARTICLE DESCRIPTION
 REGISTERED NO. **368716** CERTIFIED NO. INSURED NO.

(Always obtain signature of addressee or agent)

I have received the article described above.
 SIGNATURE ☐ Addressee ☐ Authorized agent

4. DATE OF DELIVERY *Jan 24 1975*

5. ADDRESS *Washington, D.C. 20008*

6. UNABLE TO DELIVER BECAUSE:

CLERK'S INITIALS

★ GPO: 1975-0-282-007

PLAINTIFFS' AFFIDAVIT OF SERVICE OF SUMMONS AND COMPLAINT



IMPERIAL EMBASSY OF IRAN
WASHINGTON, D. C.

July 8, 1976

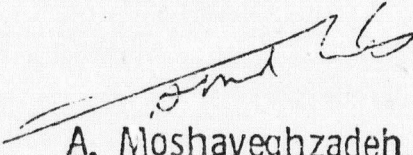
Milton G. Sincoff, Esquire
Kreindler & Kreindler
99 Park Avenue
New York, New York 10016

Re: Margie L. Upton v. The Department of Civil Aviation
of the Empire of Iran, et al.

Dear Mr. Sincoff:

I acknowledge receipt of the Summons and Complaint in the
above matter, transmitted under cover of your letter of June 29,
1976.

As you requested, these documents have already been
forwarded to the Embassy's American counsel.


A. Moshaveghzadeh,
Counselor

DEFENDANTS' NOTICE OF MOTION TO QUASH SERVICE OF PROCESS.

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

-----X
MARGIE L. UPTON, Individually and :
as Administratrix of the Estate of :
LARRY L. UPTON, deceased, et al., :

Plaintiffs, : 76 Civ. 2914

-v.- : NOTICE OF MOTION

THE DEPARTMENT OF CIVIL AVIATION :
OF THE EMPIRE OF IRAN, :

-and- :

THE EMPIRE OF IRAN, :

Defendants. :

-----X

S I R S :

PLEASE TAKE NOTICE that, without in any way waiving their sovereign immunity, the Empire of Iran ("Iran") and the Department of Civil Aviation of the Empire of Iran ("the Department"), through their undersigned counsel, will appear specially on August 11, 1976, at 10 A.M. of that day or as soon thereafter as counsel can be heard, in Room 2201, United States Courthouse, 40 Centre Street, New York, New York for the limited purpose of moving the Court, upon the annexed affidavit of George C. Smith, sworn to on July 27, 1976, and Memorandum of Law in support hereof, as follows:

1. To quash, vacate and set aside service of process on the ground that the service attempted to be made upon Iran and

DEFENDANTS' NOTICE OF MOTION TO QUASH SERVICE OF PROCESS

the Department was unlawful, invalid and void.

2. To dismiss this action with prejudice on the grounds that this Court lacks in personam jurisdiction over Iran and the Department.

Yours, etc.,

ROGERS & WELLS

By

James B. Kreindler
A Member of the Firm
Attorneys for Defendants
200 Park Avenue
New York, New York 10017
Tel. No. (212) 972-7000

TO: Milton Sincoff, Esq.
Kreindler & Kreindler
Attorneys for
99 Park Avenue
New York, New York 10016

AFFIDAVIT OF GEORGE C. SMITH IN SUPPORT OF DEFENDANTS' MOTION.

IN THE
UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

-----x

MARGIE L. UPTON, Individually and	:	
as Administratrix of the Estate of	:	76 Civ. 2914'
LARRY L. UPTON, deceased, et al.,	:	
Plaintiffs,	:	
-against-	:	
THE DEPARTMENT OF CIVIL AVIATION	:	
OF THE EMPIRE OF IRAN	:	
-and-	:	
THE EMPIRE OF IRAN,	:	
Defendants.	:	

-----x

STATE OF NEW YORK)
 : ss.:
COUNTY OF NEW YORK)

AFFIDAVIT

GEORGE C. SMITH, being duly sworn, deposes and says:

1. I am duly admitted to the Bar of the District of Columbia, Court of Appeals and associated with the law firm of Rogers & Wells, counsel for defendants in this case. Portions of the following statement are made on the basis of facts made known to me by officials or employees of the Government of Iran and are true to the best of my information and belief.

AFFIDAVIT OF GEORGE C. SMITH IN SUPPORT OF DEFENDANTS' MOTION

2. On or about July 8, 1976, a United States Marshal attempted to effect service on the defendants by entering the Consulate General of Iran, located at 630 Fifth Avenue, New York, New York, and leaving a copy of the summons and complaint with Ms. Pari Khorvash, a clerk/secretary employed at the Consulate General. The United States Marshal did not obtain the consent of the Consul General, nor of his designee, to enter the consular premises and attempt to effect service of process upon the Government of Iran. Ms. Khorvash did not state or otherwise indicate to the United States Marshal that she was authorized to accept service of process or that she would in fact accept service of process on behalf of the Consul General or on behalf of the Empire of Iran.

3. As shown by the Return of Service, on July 8, 1976, the United States Marshal purported to effect service on defendants by leaving a copy of the summons and complaint at the offices of Iran National Airlines Corporation ("Iran Air"), 345 Park Avenue, New York, New York. The Return of Service does not indicate the name of any officer or employee of Iran Air as the individual actually served.

4. Iran Air is not a department or ministry of the Government of Iran, nor is Iran Air a subdepartment or subagency

AFFIDAVIT OF GEORGE C. SMITH IN SUPPORT OF DEFENDANTS' MOTION
of the Department of Civil Aviation.

5. Under letter dated June 29, 1976, counsel for the plaintiffs sent to Mr. Ahmad Moshavegh-Zade, Counselor to the Imperial Embassy of Iran, a copy of an unsigned summons and a complaint. The unsigned summons was dated June 29, 1976. The complaint in this action was filed on June 30, 1976. In his letter dated June 29, 1976, counsel for plaintiffs also stated that a copy of the unsigned summons and the complaint within had also been sent by mail to the Honorable Sodeq Ahmadi, Minister of Justice of the Government of Iran, in Tehran, Iran.

6. The Department of Civil Aviation ("the Department") is a Department of the Government of Iran. The Department is responsible for the regulation of civil aviation in Iran, including both safety regulation and economic regulation. The Department is also responsible for the operation, administration and maintenance of civil airports in Iran, including Mehrabad International Airport, Tehran, Iran. The Department is headed by the Vice-Minister of the Ministry of War of the Government of Iran. The Department does not engage in commercial activities in the State of New York nor elsewhere

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AFFIDAVIT OF GEORGE C. SMITH IN SUPPORT OF DEFENDANTS' MOTION

in the United States. The Department maintains no office in
the State of New York.

George C. Smith
George C. Smith

Subscribed and sworn to
before me this 27th day of
July, 1976.

Lynn K. Denis

Public Notary

LYNN K. DENIS
NOTARY PUBLIC, State of New York
No. 03-4620928
Qualified in New York County
Commission Expires March 30, 1977

ATTACHMENT A TO DEFENDANTS' MEMORANDUM OF LAW IN SUPPORT OF
MOTION TO QUASH SERVICE OF PROCESS.IDENTICAL SUBMISSION
TO THE SPEAKERATTACHMENT A

DEPARTMENT OF STATE

Washington, D.C. 20520

Dear Mr. President:

The Department of State and Department of Justice submit for your consideration and appropriate reference the enclosed draft bill, entitled "To define the circumstances in which foreign states are immune from the jurisdiction of United States courts and in which execution may not be levied on their assets, and for other purposes." This is a proposed revision of the draft bill which was submitted in a letter (enclosed) to the President of the Senate dated January 22, 1973, and subsequently introduced by Senators Roman Hruska and Hugh Scott as S. 566 and by Senator William Fulbright as S. 771. A revised Section-by-Section Analysis explaining the provisions of the bill in some detail is also enclosed. A hearing was held on the companion bill H.R. 3493 before the Subcommittee of the Judiciary in the House of Representatives in the first session of the Ninety-Third Congress on June 7, 1973.

The broad purposes of this legislation -- to facilitate and depoliticize litigation against foreign states and to minimize irritations in foreign relations arising out of such litigation -- remain the same. To this end the revised bill, like its predecessor, would entrust the resolution of questions of sovereign immunity to the judicial branch of Government. The statute would codify and refine the "restrictive theory" of sovereign immunity which has guided United States practice with respect to jurisdiction originally set forth in the letter of May 19, 1952, from the Acting Legal Adviser, Jack B. Tate, to the Acting Attorney General, Philip B. Perlman. It would also replace the absolute immunity now accorded foreign

The Honorable
Nelson A. Rockefeller,
President of the Senate.

ATTACHMENT A TO DEFENDANTS' MEMORANDUM OF LAW

states from execution of judgment with an immunity from execution conforming more closely to the restrictive theory of immunity from jurisdiction. The measure also includes provisions for service of process, venue, and jurisdiction in cases against foreign states which would make it unnecessary to attach the assets of foreign states for purposes of jurisdiction.

Numerous technical changes have been made in the bill on the basis of the hearing in the House of Representatives, commentaries in a number of legal journals, and extensive discussions which have been held with members of the bar as well as the reports and recommendations of committees of several bar associations. A number of these technical revisions are important, but none of them alters the basic concept of the legislation as originally submitted.

The most important changes include (1) further definition of "commercial activity carried on in the United States by a foreign state" and "public debt" in Section 1603; (2) clarification of the limitations of immunity in tort actions (Section 1605(5)), in respect of counterclaims (Section 1607), and in case of execution of judgment (Section 1610); and (3) substantial revision of Section 1608 relating to service of process to conform with Article XXII of the Convention on Diplomatic Relations, signed at Vienna April 18, 1961, and with the Federal Rules of Civil Procedure.

In addition, important new provisions have been added to preserve the jurisdiction of the courts of the United States in cases in which a suit in admiralty is brought to enforce a maritime lien against a vessel or cargo of a foreign state (Section 1605(b)), and to avoid interference with disbursements to foreign states by certain international organizations located in the United States (Section 1611(a)). These and other changes are discussed in the enclosed Analysis.

The Departments of State and Justice believe that this revised draft bill is worthy of and will receive the support of the bar and would welcome hearings before

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the appropriate committees of the Senate to consider this measure as soon as possible.

The Office of Management and Budget has advised that there is no objection to the enactment of this legislation from the standpoint of the Administration's program.

Sincerely,

Robert S. Ingersoll
Deputy Secretary of State

Harold R. Tyler, Jr.
Deputy Attorney General

Enclosures:

1. Revised Draft Bill
2. Revised Section-by-Section Analysis
3. Letter to the President of the Senate
dated January 22, 1973

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FOREIGN SOVEREIGN IMMUNITIES ACT OF 1975

Section-by-Section Analysis

This bill, entitled the "Foreign Sovereign Immunities Act of 1975," sets forth the sole and exclusive standards to be used in resolving questions of sovereign immunity raised by foreign states before federal and state courts in the United States. It is intended to preempt any other state or federal law (excluding applicable international agreements) for according immunity to foreign sovereigns, their political subdivisions, their agencies and their instrumentalities. It is also designed to bring U.S. practice into conformity with that of most other nations by leaving sovereign immunity decisions exclusively to the courts, thereby discontinuing the practice of judicial deference to "suggestions of immunity" from the Executive Branch. (See Ex Parte Peru, 318 U.S. 578, 588-589 (1943)).

The bill is not intended to affect the substantive law of liability. Nor is it intended to affect either diplomatic or consular immunity, or the attribution of responsibility between or among entities of a foreign state -- e.g., whether the proper entity of a foreign state has been sued, or whether an entity sued is liable in whole or in part for the claimed wrong.

Aside from setting forth comprehensive rules governing sovereign immunity, the bill prescribes: the jurisdiction of United States district courts in cases involving foreign states; procedures for commencing a lawsuit against foreign states in both federal and state courts; and circumstances under which attachment and execution may be obtained against the property of foreign states to satisfy a judgment against foreign states in both federal and state courts.

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Constitutional authority for enacting such legislation derives from Congress' power to prescribe the jurisdiction of federal courts (Art. I, Sec. 8, Cl. 9; Art. III, Sec. 1); to define offenses against the "Law of Nations" (Art. I, Sec. 8, Cl. 10); to regulate commerce with foreign nations (Art. I, Sec. 8, Cl. 3); and "to make all Laws necessary and proper for carrying into Execution . . . all . . . Powers vested . . . in the Government of the United States," including the judicial power of the United States over controversies between "a State, or the Citizens thereof, and foreign states" (Art. I, Sec. 8, Cl. 18; Art. III, Sec. 2, Cl. 1). See National Bank v. Republic of China, 348 U.S. 356, 370-71 (1955) (Reed J., dissenting); cf. Banco Nacional de Cuba v. Sabbatino, 376 U.S. 398, 425 (1964).

This section-by-section analysis supersedes the section-by-section analysis that accompanied the earlier version of the bill (i.e., S. 566 and H.R. 3493, 93d Cong., 1st Sess.); the prior analysis should not be consulted in interpreting the current bill and its provisions, and no inferences should be drawn from differences between the two.

SEC. 2. Jurisdiction in Actions Against Foreign States

Section 2 of the bill adds a new Section 1330 to Title 28 of the United States Code, and provides for subject matter and personal jurisdiction of U.S. district courts over foreign states and their political subdivisions, agencies and instrumentalities. Section 1330 provides a comprehensive jurisdictional scheme in cases involving foreign states. Such broad jurisdiction in the federal courts should be conducive to uniformity in decision, which is desirable since a disparate treatment of cases involving foreign governments may have adverse

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foreign relations consequences. Plaintiffs, however, will have an election whether to proceed in federal court or in a court of a State, subject to the removal provisions of Section 6 of the bill.

(a) Subject Matter Jurisdiction. Section 1330(a) gives federal district courts original jurisdiction in personam against foreign states (defined as including political subdivisions, agencies and instrumentalities of foreign states). The jurisdiction extends to any claim with respect to which the foreign state is not entitled to immunity under Sections 1605-1607 proposed in the bill, or under any applicable international agreement of the type contemplated by the proposed Section 1604.

As in suits against the United States Government, jury trials are excluded. See 28 U.S.C. 2402. Actions tried by a court without jury will tend to promote a uniformity in decision where foreign governments are involved.

In addition, the jurisdiction of district courts in cases against foreign states is to be without regard to amount in controversy. This is intended to encourage the bringing of actions against foreign states in federal courts. Under existing law, the district courts have diversity jurisdiction in actions in which foreign states are parties, but only where the amount in controversy exceeds \$10,000. 28 U.S.C. 1332(a)(2) and (3). (See analysis of Section 3 of the bill, below.)

(b) Personal Jurisdiction. Section 1330(b) provides a federal long-arm statute over foreign states (including political subdivisions, agencies and instrumentalities of foreign states). It is patterned after the long-arm statute Congress enacted for the District of Columbia. Pub. L. 91-358, §132(a), Title I, 84 Stat. 549. Two criteria must be met: (1) the claim must be one over which the district courts have original jurisdiction under Section 1330(a), meaning a claim for which the

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foreign state is not entitled to immunity; and
(2) proper service of process must be made under
the new Section 1608 in the bill.

The first criterion necessitates a substantial contact or other nexus between the United States and the challenged activity of the foreign state. Cf. International Shoe Co. v. Washington, 326 U.S. 310, 316 (1945) and McGee v. International Life Ins. Co., 355 U.S. 220, 223 (1957). Thus, the activities which under Sections 1605-1607 in the bill deny to a foreign state immunity from suit involve either a nexus with the United States or a waiver by the foreign state of its immunity from jurisdiction.

(c) Effect of an Appearance. Section 1330(c) states that a mere appearance by a foreign state in an action does not confer personal jurisdiction with respect to claims which could not be brought as an independent action under this bill. The purpose is to make it clear that a foreign state does not subject itself to claims unrelated to the action solely by virtue of an appearance before a U.S. court. While the plaintiff is free to amend his complaint, he is not permitted to add claims for relief not based on transactions or occurrences listed in the bill. The term "transaction or occurrence" includes each basis set forth in Sections 1605-1607 for not granting immunity, including waivers.

SEC. 3. Diversity Jurisdiction as to Foreign States

Section 3 of the bill amends those provisions of 28 U.S.C. 1332 which relate to diversity jurisdiction of U.S. district courts over foreign states. Since jurisdiction in actions against foreign states is comprehensively treated by the new Section 1330, a similar jurisdictional basis under Section 1330 becomes superfluous. The amendment deletes references to "a foreign state" now found in paragraphs (2) and (3) of 28 U.S.C. 1332(a), and adds a new paragraph

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(4) to provide for diversity jurisdiction in actions brought by a foreign state as plaintiff. These changes would not affect the applicability of Section 1332 to entities that are both owned by a foreign state and are also citizens of a state of the United States as defined in 28 U.S.C. 1332(c) and (d). See analysis to Section 1603(b).

SEC. 4. New Chapter 97: Sovereign Immunity Provisions

Section 4 of the bill adds a new Chapter 97 to Title 28, U.S. Code, which sets forth the legal standards under which federal and state courts would henceforth determine all claims of sovereign immunity raised by foreign states and their political subdivisions, agencies and instrumentalities. The specific sections of Chapter 97 are as follows:

Section 1602. Findings and Declaration of Purpose.

Section 1602 sets forth the central premise of the bill: that decisions on claims by foreign states to sovereign immunity are best made by the judiciary on the basis of a statutory regime which incorporates standards recognized under international law.

Although the general concept of sovereign immunity appears to be recognized in international law, its specific content and application have generally been left to the courts of individual nations. There is, however, a wide acceptance of the so-called "restrictive theory" of sovereign immunity -- i.e., that the sovereign immunity of foreign states should be "restricted" to cases involving acts of a foreign state which are sovereign or governmental in nature, as opposed to acts which are either commercial in nature or those which private persons normally perform. This restrictive theory has been adhered to by the Department of

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State since the "Tate letter" of May 19, 1952.
26 Dept. of State Bull. 984 (1952).

Section 1603. Definitions.

Section 1603 defines five terms that are used in the bill:

(a) Foreign State. Subsection (a) defines the term foreign state as used in all provisions of Chapter 97, except Sections 1606 and 1608. In those latter two sections, the term "foreign state" refers only to the sovereign state itself.

As the definition indicates, the term "foreign state" as used in every other section of Chapter 97 includes not only the foreign state but also political subdivisions, agencies and instrumentalities of the foreign state. The term "political subdivisions" includes all governmental units beneath the central government including local governments.

(b) Agency or Instrumentality of a Foreign State. Subsection (b) defines an "agency or instrumentality of a foreign state" as any entity (1) which is a separate legal person, (2) which is an organ of a foreign state or of a political subdivision of a foreign state, or a majority of whose shares or other ownership interest is owned by a foreign state or by a foreign state's political subdivision, and (3) which is neither a citizen of a State of the United States as defined in 28 U.S.C. 1332(c) and (d) nor created under the laws of any third country.

The first criterion, that the entity be a separate legal person, is intended to include a corporation, association, foundation or any other entity which, under the law of the foreign state where it was created, can sue or be sued in its own name, contract in its own name or hold property in its own name.

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The second criterion requires that the entity be either an organ of a foreign state (or of a foreign state's political subdivision), or that a majority of the entity's shares or other ownership interest be owned by a foreign state (or by a foreign state's political subdivision). If such entities are entirely owned by a foreign state, they would of course be included within the definition. Where ownership is divided between a foreign state and private interests, the entity will be deemed to be an agency or instrumentality of a foreign state only if a majority of the ownership interests (shares of stock or otherwise) is owned by a foreign state or by a foreign state's political subdivision.

The third criterion excludes entities which are citizens of a state of the United States as defined in 28 U.S.C. 1332(c) and (d) -- for example, a corporation organized and incorporated under the laws of the State of New York but owned by a foreign state. See Amtorg Trading Corp. v. United States, 71 F.2d 524 (C.C.P.A. 1934). Also excluded are entities which are created under the laws of third countries. The rationale behind these exclusions is that if a foreign state acquires or establishes a company or other legal entity in a foreign country, such entity is presumptively engaging in activities that are either commercial or private in nature.

An entity which does not fall within the definitions of Sections 1603(a) or (b) would not be entitled to sovereign immunity in any case before a federal or state court. On the other hand, the fact that an entity is an "agency or instrumentality of a foreign state" does not in itself establish an entitlement to sovereign immunity. A court would have to consider whether one of the sovereign immunity exceptions contained in the bill (see Sections 1605-07 and 1610-11) was applicable.

As a general matter, entities which meet the definition of an "agency or instrumentality of a foreign state" could assume a variety of forms, including a state trading corporation, a mining

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enterprise, a transport organization such as a shipping line or airline, a steel company, a central bank, an export association, a governmental procurement agency or a department or ministry which acts and is suable in its own name.

(c) United States. Paragraph (c) of Section 1603 defines "United States" as including all territory and waters subject to the jurisdiction of the United States.

(d) Commercial Activity. Paragraph (c) of Section 1603 defines the term "commercial activity" as including a broad spectrum of endeavor, from an individual commercial transaction or act to a regular course of commercial conduct. A "regular course of commercial conduct" includes the carrying on of a commercial enterprise such as a mineral extraction company, an air line or a state trading corporation. Certainly, if an activity is customarily carried on for profit, its commercial nature could readily be assumed. At the other end of the spectrum, a single contract, if of the same character as a contract which might be made by a private person, could constitute a "particular transaction or act."

As the definition indicates, the fact that goods or services to be procured through a contract are to be used for a public purpose is irrelevant; it is the essentially commercial nature of an activity or transaction that is critical. Thus, a contract by a foreign government to buy provisions or equipment for its armed forces or to construct a government building constitutes a commercial activity. The same would be true of a contract to make repairs on an embassy building. Such contracts should be considered to be commercial contracts, even if their ultimate object is to further a public function.

By contrast, a foreign state's mere participation in a foreign assistance program administered by the Agency for International Development (AID)

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is an activity whose essential nature is public or governmental, and it would not itself constitute a commercial activity. By the same token, a foreign state's activities in and "contacts" with the United States resulting from or necessitated by participation in such a program would not in themselves constitute a sufficient commercial nexus with the United States so as to give rise to jurisdiction (see Section 1330) or to assets which could be subjected to attachment or execution with respect to unrelated commercial transactions (see Section 1610(b)). However, a transaction to obtain goods or services from private parties would not lose its otherwise commercial character because it was entered into in connection with an AID program. Also public or governmental and not commercial in nature, would be the employment of diplomatic, civil service or military personnel, but not the employment of American citizens or third country nationals by the foreign state in the United States.

The courts would have a great deal of latitude in determining what is a "commercial activity" for purposes of this bill. It has seemed unwise to attempt an excessively precise definition of this term, even if that were practicable. Activities such as a foreign government's sale of a service or a product, its leasing of property, its borrowing of money, its employment or engagement of laborers, clerical staff or public relations or marketing agents, or its investment in a security of an American corporation, would be among those included within the definition.

(e) Commercial Activity Carried on in the United States by a Foreign State. As paragraph (d) of Section 1603 indicates, a commercial activity carried on in the United States by a foreign state would include not only a commercial transaction performed and executed in its entirety in the United States, but also a commercial transaction or act having a "substantial contact" with the United States. This definition includes cases based on commercial transactions performed in whole or in part in the United States, import-export transactions involving

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sales to, or purchases from, concerns in the United States, business torts occurring in the United States (cf. § 1605(a)(5)), and an indebtedness incurred by a foreign state which negotiates or executes a loan agreement in the United States, or which receives financing from a private or public lending institution located in the United States (e.g. loans, guarantees or insurance provided by the Export-Import Bank of the United States). It will be for the courts to determine whether a particular commercial activity has been performed in whole or in part in the United States. This definition, however, is intended to reflect a degree of contact beyond that occasioned simply by U. S. citizenship or U.S. residence of the plaintiff.

Section 1604. Immunity of Foreign States from Jurisdiction.

New Chapter 97 of Title 28, United States Code, starts from a premise of immunity and then creates exceptions to the general principle. The chapter is thus cast in a manner consistent with the way in which the law of sovereign immunity has developed. Stating the basic principle in terms of immunity may be of some advantage to foreign states in doubtful cases, but, since sovereign immunity is an affirmative defense which must be specially pleaded, the burden will remain on the foreign state to produce evidence in support of its claim of immunity.

The immunity from jurisdiction provided in Section 1604 applies to proceedings in both federal and state courts. Section 1604 would be the only basis under which a foreign state can claim immunity from the jurisdiction of any federal or state court in the United States.

All immunity provisions are made subject to "existing" treaties and other international agreements to which the United States is a party. In the event of any conflict with this bill, provisions

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in treaties and international agreements would control. They include inter alia treaties of friendship, commerce and navigation and bilateral air transport agreements which contain provisions relating to the immunity of foreign states. Similarly, this bill would not alter the rights or duties of the United States under the NATO Status of Forces Agreement or similar agreements with other countries; nor would it alter the provisions of commercial contracts, or existing and future agreements to which the United States is a party, calling for exclusive nonjudicial remedies through arbitration or other procedures for the settlement of disputes.

The immunity provisions are also subject to "future" international agreements. Included in this concept is the possibility of a future international convention on sovereign immunity, just as there are in existence at present international conventions on diplomatic and consular immunity.

Section 1605. General Exceptions to the Jurisdictional Immunity of Foreign States.

Section 1605 sets forth the general circumstances in which a claim of sovereign immunity by a foreign state, as defined in Section 1603(a) would not be recognized in a federal or state court in the United States.

(a)(1) Waivers. Section 1605(a)(1) treats explicit and implied waivers by foreign states of sovereign immunity. With respect to explicit waivers, a foreign state may renounce its immunity by treaty, as has been done by the United States with respect to commercial and other activities in a series of treaties of friendship, commerce, and navigation, or a foreign state may waive its immunity in a contract with a private party. Since the sovereign immunity of a political subdivision, agency or instrumentality

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of a foreign state derives from the foreign state itself, the foreign state may waive the immunity of its political subdivisions, agencies or instrumentalities.

With respect to implicit waivers, the courts have found such waivers in cases where a foreign state has agreed to arbitration in another country or where a foreign state has agreed that the law of a particular country should govern a contract. An implicit waiver would also include a situation where a foreign state has filed a responsive pleading in an action without raising the defense of sovereign immunity.

The language, "notwithstanding any withdrawal of the waiver which the foreign state may purport to effect except in accordance with the terms of the waiver," is designed to exclude a withdrawal of the waiver both after and before a dispute arises except in accordance with the terms of the original waiver. In other words, if the foreign state agrees to a waiver of sovereign immunity in a contract, that waiver may subsequently be withdrawn only in a manner consistent with the expression of the waiver in the contract. Some court decisions have allowed subsequent and unilateral rescissions of waivers by foreign states. But the better view, and the one followed in this section, is that a foreign state which has induced a private person into a contract by promising not to invoke its immunity cannot, when a dispute arises, go back on its promise and seek to revoke the waiver unilaterally.

(a)(2) Commercial Activities Having a Nexus with the United States. Section 1605(a)(2) treats what is probably the most important instance in which foreign states are denied immunity, that in which the foreign state engages in a commercial activity. The definition of a "commercial activity" is set forth in Section 1603(d) of the bill, and is discussed in the analysis to that section.

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Section 1605(a)(2) mentions three situations in which a foreign state would not be entitled to immunity with respect to a claim based upon a commercial activity. The first of these situations is where the "commercial activity [is] carried on in the United States by the foreign state." This phrase is defined in Section 1603(e) of the bill. See the analysis to that section.

The second situation, an "act performed in the United States in connection with a commercial activity of the foreign state elsewhere," looks to conduct of the foreign state in the United States which relates either to a regular course of commercial conduct elsewhere or to a particular commercial transaction concluded or carried out in part elsewhere. Examples of this type of situation might include: a representation in the United States by an agent of a foreign state that leads to an action for restitution based on unjust enrichment; an act in the United States that violates U.S. securities laws or regulations; the wrongful discharge in the United States of an employee of the foreign state who has been employed in connection with a commercial activity carried on in some third country.

Although some or all of these acts might also be considered to be a "commercial activity carried on in the United States," as broadly defined in Section 1603 (e), it has seemed advisable to provide expressly for the case where a claim arises out of a specific act in the U.S. which is commercial or private in nature and which relates to a commercial activity abroad. It should be noted that the acts (or omissions) encompassed in this category are limited to those which in and of themselves are sufficient to form the basis of a cause of action.

The third situation -- "an act outside the territory of the United States in connection with a commercial activity of the foreign state elsewhere and that act causes a direct effect in the United States" -- would embrace commercial conduct abroad

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having direct effects within the United States which would subject such conduct to the exercise of jurisdiction by the United States consistent with principles set forth in Section 18, Restatement of the Law, Second, Foreign Relations Law of the United States (1965).

Neither the term "direct effect" nor the concept of "substantial contacts" embodied in Section 1603(e) is intended to alter the application of the Sherman Antitrust Act, 15 U.S.C. 1, et seq. to any defendant. Thus, the bill does not affect the holdings in such cases as United States v. Pacific & Arctic Ry. & Nav. Co., 228 U.S. 87 (1913), or Pacific Seafarers, Inc. v. Pacific Far East Line, Inc., 404 F.2d 803 (D.C. Cir. 1968), cert. denied, 393 U.S. 1093 (1969).

(a)(3) Expropriation Claims. Section 1605(a)(3) would, in two categories of cases, deny immunity where "rights in property taken in violation of international law are in issue." The first category involves cases where the property in question or any property exchanged for such property is present in the United States, and where such presence is in connection with a commercial activity carried on in the United States by the foreign state, or political subdivision, agency or instrumentality of the foreign state. The second category is where the property, or any property exchanged for such property, is (i) owned or operated by an agency or instrumentality of a foreign state and (ii) that agency or instrumentality is engaged in a commercial activity in the United States. Under the second category, the property need not be present in connection with a commercial activity of the agency or instrumentality.

The term "taken in violation of international law" would include the nationalization or expropriation of property without payment of compensation required by international law. It would also include takings which are arbitrary or discriminatory in nature. Since, however, this section deals solely with issues of immunity, it in no way affects existing

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law on the extent to which, if at all, the "act of state" doctrine may be applicable.

(a)(4) Immovable, Inherited and Gift Property. Section 1605(a)(4) denies immunity in litigation relating to rights in real estate and in inherited or gift property located in the United States. It is established that, as set forth in the "Tate Letter" of 1952, sovereign immunity should not be granted in actions with respect to real property, diplomatic and consular property excepted. 26 Dept. of State Bulletin 984 (1952). It does not matter whether a particular piece of property is used for commercial or public purposes.

It is maintainable that the exception mentioned in the "Tate Letter" with respect to diplomatic and consular property is limited to questions of attachment and execution and does not apply to an adjudication of rights in that property. Thus the Vienna Convention on Diplomatic Relations, concluded in 1961, provides in Article 22 that the "premises of the mission, their furnishings and other property thereon and the means of transport of the mission are immune from search, requisition, attachment or execution." Actions short of attachment or execution seem to be permitted under the Convention, and a foreign state cannot deny to the local state the right to adjudicate questions of ownership, rent, servitudes, and similar matters, as long as the foreign state's possession of the premises is not disturbed.

There is general agreement that a foreign state may not claim immunity when the suit against it relates to rights in property, real or personal, obtained by gift or inherited by the foreign state and situated or administered in the country where the suit is brought. As stated in the "Tate Letter," immunity should not be granted "with respect to the disposition of the property of a deceased person even though a foreign sovereign is the beneficiary." The reason is that, in claiming rights in a decedent's estate or obtained by gift, the foreign state claims the same right which is enjoyed by private persons.

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→ (a)(5) Non-Commercial Torts. Section 1605(a)(5) is directed primarily at the problem of traffic accidents but is cast in general terms as applying to all tort actions for money damages, not otherwise encompassed by Section 1605(a)(2) relating to commercial activities. It denies immunity as to claims for personal injury or death, or for damage to or loss of property, caused by the tortious act or omission of a foreign state or its officials or employees, acting within the scope of their authority; the tortious act or omission must occur within the jurisdiction of the United States, and must not come within one of the exceptions enumerated in the second paragraph of the subsection.

As used in Section 1605(a)(5), the phrase "tortious act or omission" is meant to include causes of action which are based on strict liability as well as on negligence. The exceptions provided in subparagraphs (A) and (B) of Section 1605(a)(5) correspond to many of the claims with respect to which the United States Government retains immunity under the Federal Tort Claims Act, 28 U.S.C. 2680(a) and (h).

Like other provisions in the bill, Section 1605 is subject to existing and future international agreements (see Section 1604) including Status of Forces Agreements; if a remedy is available under a Status of Forces Agreement, the foreign state is immune from such tort claims as are encompassed in Sections 1605(a)(2) and 1605(a)(5).

Since the bill deals only with the immunity of foreign states and not its diplomatic or consular representatives, Section 1605(a)(5) would not govern suits against diplomatic or consular representatives but only suits against the foreign state. It is noteworthy in this regard that while the Vienna Convention on Consular Relations of 1963 expressly abolishes the immunity of consular officers with respect to civil actions brought by a third party for "damage arising from an accident in the receiving State caused by a vehicle, vessel or aircraft," there is no such provision in the Vienna Convention on Diplomatic Relations of 1961. Consequently, no

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case relating to a traffic accident can be brought against a member of a diplomatic mission.

The purpose of Section 1605(a)(5) is to permit the victim of a traffic accident or other non-commercial tort to maintain an action against the foreign state to the extent otherwise provided by law. See, however, Section 1605(c).

(b) Maritime Liens. Section 1605(b) denies immunity to a foreign state in cases where (i) a suit in admiralty is brought to enforce a maritime lien against a vessel or cargo of that foreign state, (ii) the maritime lien is based upon a commercial activity of the foreign state, and (iii) the conditions in paragraphs (1) and (2) of Section 1605 (b) have been complied with.

The purpose of this subsection is to permit a plaintiff to bring suit in a United States district court arising out of a maritime lien involving a vessel or cargo of a foreign sovereign without arresting the vessel, by instituting an in personam action against the foreign state in a manner analogous to bringing such a suit against the United States. Cf. 46 U.S.C. 741, et seq. In view of Section 1609 of the bill, Section 1605(b) is designed to avoid arrests of vessels or cargo of a foreign state to commence a suit. Instead, as provided in paragraph (1), a copy of the summons and complaint must be served either on the master or other person having possession of the vessel and cargo against either of which the maritime lien is asserted, or on their agent (such as the second in command of the ship). If, however, the vessel or its cargo is arrested or attached, the plaintiff will lose his in personam remedy and the foreign state will be entitled to immunity -- except in the rare case where the plaintiff was unaware that the vessel or cargo of a foreign state was involved. This would be a rare case because the flag of the vessel, the circumstances giving rise to the maritime lien, or the information contained in ship registries kept in ports throughout the United States

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should make known the ownership of the vessel in question, if not the cargo. If, however, the vessel or cargo is mistakenly arrested, such arrest or attachment must, under Section 1609, be immediately dissolved when the foreign state brings to the court's attention its interest in the vessel or cargo and, hence, its right to immunity from arrest.

Under paragraph (2), the plaintiff must also be able to prove that the procedures for service of process under Section 1608(a) or (b) have commenced -- for example, that the clerk of the court has mailed the requisite copies of the summons and complaint, etc. The plaintiff need not show that service has actually been made under Section 1608(c). The reason for this second requirement is to help make certain that the foreign state concerned receives prompt and actual notice of the institution of a suit in admiralty in the United States, even if the copies served on the master of the vessel should fail to reach the foreign state.

(c) Scope of Liability When Immunity is not Accorded. Section 1605(c) makes clear that if the foreign state, political subdivision, agency or instrumentality is not entitled to immunity from jurisdiction, liability exists as it would for a private party under like circumstances. However, the tort liability of a foreign state itself (but not of a political subdivision, agency or instrumentality of a foreign state) does not extend to interest prior to judgment or to punitive damages. Under current international practice, punitive damages are usually not assessed against foreign states. See, 5 Hackworth, Digest of International Law, 723-26 (1943); Garcia-Amador, State Responsibility, 94 Hague Recueil des Cours 365, 476-81 (1958). This subsection is based upon 28 U.S.C. 2674, which places similar limitations on the liability of the United States Government in tort.

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Section 1606. Claims Involving the Public Debt.

Section 1606 provides for the immunity of a foreign state itself (as opposed to its political subdivisions, agencies or instrumentalities) in cases relating to the public debt of the foreign state.

Subsection (b) relates to the immunity of a foreign state with respect to debt obligations incurred for general governmental purposes and backed by the full faith and credit of the foreign state. Such immunity was recognized in dictum in Victory Transport, Inc. v. Comisaria General de Abastecimientos y Transportes, 336 F.2d 354 (2nd Cir.), cert. denied, 381 U.S. 934 (1964). Where the underwriters of such securities regard immunity as detrimental to the success of the issue, the foreign government may surrender its immunity by express waiver.

Section 1606(b) embodies the generally accepted view that the immunity of the central government of a state for public debts is not shared by its subordinate political entities or agencies or instrumentalities of the foreign state. Immunity with respect to the public debt of political subdivisions, agencies or instrumentalities would be governed by other provisions of the bill, such as Section 1605 (a)(2). Thus, in cases where an agency or instrumentality, such as a central bank, incurs an indebtedness for general governmental purposes which constitutes an obligation backed by the full faith and credit of the foreign state, Section 1606(b) would apply only to the obligation of the foreign state and not to that of the agency or instrumentality.

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Section 1606(b)(1) provides for explicit waivers of immunity in public debt cases. The waiver must be that of the foreign state. Where the debt obligation is incurred through an agency or instrumentality of the foreign state, a waiver from the agency or instrumentality would be deemed to be a waiver of the foreign state only where the waiver is made in the name of the foreign state. Section 1606(b)(2) preserves any remedies under the Federal Securities Laws applicable to foreign states. In applying Section 1606(b), courts will have to determine whether a debt obligation is for general governmental purposes or for a specific governmental or other purpose.

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Section 1607. Counterclaims.

Section 1607 applies to counterclaims against a foreign state which brings an action or intervenes in an action in a federal or state court. It would deny immunity in three situations. First, immunity would be denied as to any counterclaim for which the foreign state would not be entitled to immunity under Sections 1605 and 1606, if the counterclaim had been brought as a direct claim in a separate action against the foreign state. This provision is based upon Article I of the European Convention on State Immunity.

Second, even if a foreign state would otherwise be entitled to immunity under Sections 1604-1606, it would not be immune from a counterclaim "arising out of the transaction or occurrence that is the subject matter of the claim of the foreign state." This is the same terminology as that used in Rule 13(a) of the Federal Rules of Civil Procedure and is consistent with Section 70(2)(b), Restatement of the Law, Second, Foreign Relations Law of the United States (1965). Certainly, if a foreign state brings or intervenes in an action based on a particular transaction or occurrence, it should not obtain the benefits of litigation before U.S. courts while avoiding any legal liabilities claimed against it and arising from that same transaction or occurrence.

Third, notwithstanding that the foreign state may be immune under subsections (a) and (b), the foreign state nevertheless would not be immune from a counterclaim to the extent that the counterclaim seeks relief neither exceeding in amount nor differing in kind from that sought by the foreign state. Subsection (c) codifies the rule enunciated in National Bank v. Republic of China, 348 U.S. 356 (1955).

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Section 1608. Service of process; time to answer; default.

Section 1608 sets forth the exclusive procedures with respect to service of process on the filing of an answer or other responsive pleading by, and obtaining a default judgment against a foreign state or its political subdivisions, agencies or instrumentalities. These procedural provisions are intended to fill a void in existing federal and state law.

All of the provisions of Section 1608 are made "subject to existing and future international agreements to which the United States is a party." As in Sections 1604 and 1609, this language contemplates the possibility of a future international convention on sovereign immunity, and in particular on procedures to be used in litigation against foreign states. An "existing" international agreement which is applicable is the Hague Convention on Service Abroad of Judicial and Extrajudicial Documents, 20 UST 361, TIAS 6638 (1965).

(a) Service on Foreign States and Political Subdivisions. Subsection (a) of Section 1608 sets forth the exclusive procedures for service of process on a foreign state, or political subdivision thereof, but not on an agency or instrumentality of a foreign state which is covered in subsection (b). There is a hierarchy in the methods for serving process under subsection (a). Paragraph (1) provides for service in accordance with any special arrangement which may have been agreed upon between a plaintiff and the foreign state or political subdivision. If such an arrangement exists, service must be made under this method. The purpose of subsection (a)(1) is to encourage potential plaintiffs and foreign states to agree by contract for a procedure on service of process.

If no special arrangement exists, subsection (a)(2) provides two alternative methods of service. The first method, set forth in subparagraph (A), involves the transmittal of "a letter rogatory or a request"

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for ultimate service in a foreign country. This method is currently provided under Rule 4(i)(B), F.R. Civ. P., for service on nonresident defendants. The Department of State has the authority to transmit letters rogatory from a court in the United States to authorities in foreign countries, under 28 U.S.C. 1781(a)(2). The transmittal of letters rogatory or requests may also be governed by international agreements such as the Hague Convention on Service Abroad of Judicial and Extrajudicial Documents, supra. Service under a letter rogatory or request under such international agreements would be "directed by an authority of the foreign state" within the meaning of subparagraph (A).

The alternative method, set forth in Subparagraph (B), is for service by mail on the foreign minister or other official in charge of the foreign affairs of the foreign state. This method is based on Rule 4(i)(D), F.R. Civ. P.

Subsection (a)(3) provides, as a method of last resort, service through diplomatic channels. It is applicable only if 60 days have elapsed since service was initiated under any method provided in subsections (a)(1) or (2) and if proof of service has not been made.

However, the method for direct service through diplomatic channels cannot be resorted to in every case. One situation where it is available is where the claim is against a foreign state arising from an act of a diplomatic or consular representative of a foreign state. Such acts might include the entering into a contract to construct an embassy or a consulate, or a traffic accident caused by a diplomatic or consular representative acting within the scope of his employment for which the foreign state is liable under the doctrine of respondent superior. Not included are personal claims against diplomatic or consular representatives as individuals, which again are not covered by this statute.

The only other situations where this method of direct service through diplomatic channels may be resorted to are set forth in subparagraphs (B) and (C) of subsection (a)(3). A list maintained by the Secretary of State and published in the Federal Register shall be conclusive evidence of whether a

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foreign state may be subject to service through diplomatic channels under subparagraphs (B) or (C).

In those cases where direct service may be made through diplomatic channels, the transmittal of a copy of the summons and complaint with translation by diplomatic note will in itself constitute service. This is to be distinguished from the transmittal of a letter rogatory by the Department of State, which is simply an administrative step leading to the ultimate service in a foreign country under the direction of a foreign authority, usually a foreign court.

(b) Service on Agencies or Instrumentalities. Subsection (b) of Section 1608 provides the methods under which service shall be made upon an agency or instrumentality of a foreign state, as defined in Section 1603(b). Again, service must always be made in accordance with any special arrangement for service between a plaintiff and the agency or instrumentality. If no such arrangement exists, then service must be made under subsection (b)(2) which provides for service upon officers, or managing, general or appointed agents in the United States of the agency or instrumentality.

If there is no special arrangement and if the agency or instrumentality has no representative in the United States, service may be made under one of the three methods provided in subsection (b)(3). The first two of these methods, provided in subparagraphs (A) and (B), are identical to methods applicable to service on a foreign state or political subdivision under subsection (a)(2).

The third method, in subparagraph (C), authorizes a court to fashion a method of service, for example under Rule 83 F.R. Civ. P., provided the method is "consistent with the law of the place where service is to be made." This latter language takes into account the fact that the laws of foreign countries

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may prohibit the service in their country of judicial documents by process servers from the United States. It is contemplated that no court will direct service upon a foreign state by appointing someone to make a physical attempt at service abroad, unless it is clearly consistent with the law of the foreign jurisdiction where service is to be attempted. It is also contemplated that the courts will not direct service in the United States upon diplomatic representatives, Hellenic Lines Ltd. v. Moore, 345 F.2d 978 (D.C. Cir. 1965), or upon consular representatives, Oster v. Dominion of Canada, 144 F. Supp. 746 (N.D.N.Y. 1956), aff'd 238 F.2d 400 (2d Cir.).

(c) When Service is Made. Subsection (c) of Section 1608 establishes the time when service shall be deemed to have been made under each of the methods provided in subsections (a) and (b).

(d) Time to Answer or Reply. Subsection (d) of Section 1608 gives each foreign state, political subdivision thereof or agency or instrumentality of a foreign state or political subdivision up to 60 days from the time service is deemed to have been made in which to answer, file a responsive pleading or other reply to a pleading or counterclaim. This corresponds to similar provisions applicable in suits against the United States or its officers or agencies. Rule 12(a), F.R. Civ. P.

(e) Default Judgments. Subsection (e) of Section 1608 provides that no default judgment may be entered against a foreign state, or its political subdivisions, agencies or instrumentalities, "unless the claimant establishes his claim or right to relief by evidence satisfactory to the court." This is the same requirement applicable to default judgments against the United States Government under Rule 55(e), F.R. Civ. P. In determining whether the claimant has established his claim or right to relief, it is expected that courts will take into account the extent to which the plaintiff's case depends on appropriate

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discovery against the foreign state. Once the default judgment is entered, notice of such judgment must be sent in the manner prescribed for service of process in Sections 1608(a) or (b).

Special note should be made of two means which are currently in use in attempting to commence litigation against a foreign state. First, the current practice of attempting to commence a suit by attachment of a foreign state's property would be prohibited under Section 1609 in the bill, because of foreign relations considerations and because such attachments are rendered unnecessary by the liberal service and jurisdictional provisions of the bill. See the analysis to Section 1609.

A second means, of doubtful validity, involves the mailing of a copy of the summons and complaint to a diplomatic mission of the foreign state. Section 1608 precludes this method so as to avoid questions of inconsistency with Section 1 of Article 22 of the Vienna Convention on Diplomatic Relations, 23 UST 3227, TIAS 7502 (1961), which entered into force in the United States on December 13, 1972. Subsequent to the introduction of S. 566 and H.R. 3493, 93rd Cong. 1st Sess., several foreign governments brought to the attention of the Department of State that the drafters of the Vienna Convention had construed Article 22 as prohibiting the service of any process or writ, "even by post, within the premises of a diplomatic mission." The United States has formally acknowledged this view. See 71 Dept. of State Bull. 458-59 (1974). Service on an embassy by mail would be precluded under this bill.

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Section 1609. Immunity from Attachment and Execution of Property of a Foreign State.

As in the case of Section 1604 of the bill with respect to jurisdiction, Section 1609 states a general proposition that the property of a foreign state, as defined in Section 1603(a), is immune from attachment and from execution, and then exceptions to this proposition are carved out in Sections 1610 and 1611. Here, it should be pointed out that neither Section 1610 nor 1611 would permit an attachment for the purpose of obtaining jurisdiction over a foreign state or its property. For this reason, Section 1609 has the effect of precluding attachments as a means for commencing a lawsuit.

Attachment of foreign government property for jurisdictional purposes has been recognized "where under international law a foreign government is not immune from suit" and where the property in the United States is commercial in nature. Weilamann v. Chase Manhattan Bank, 21 Misc. 2d 1086, 192 N.Y.S. 2d 469 (Sup. Ct. N.Y. 1959). Even in such cases, however, it has been recognized that property attached for jurisdictional purposes cannot be retained to satisfy a judgment because, under current practice, the property of a foreign sovereign is immune from execution.

Attachments for jurisdictional purposes have been criticized as involving United States courts in litigation not involving any significant U.S. interest or jurisdictional contacts, apart from the fortuitous presence of property in the jurisdiction. Such cases frequently require the application of foreign law to events which occur entirely abroad.

Such attachments can also give rise to serious friction in the United States foreign relations. In some cases, plaintiffs obtain numerous attachments over a variety of foreign government assets found in various parts of the United States. This shotgun approach has caused significant irritation to many foreign governments.

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At the same time, one of the fundamental purposes of this bill is to provide a long-arm statute that makes attachment for jurisdictional purposes unnecessary in cases where there is a nexus between the claim and the United States. Claimants will clearly benefit from the expanded methods under the bill for service of process on a foreign state (Section 1608), as well as from the certainty that such service will, under Section 1330(b) of the bill, confer personal jurisdiction over a foreign state in federal courts as to every claim for which the foreign state is not entitled to immunity. The elimination of attachment as a vehicle for commencing a lawsuit will ease the conduct of foreign relations by the United States and help eliminate the necessity for determinations of claims of sovereign immunity by the State Department.

Section 1610. Exceptions to Immunity from Attachment or Execution.

Section 1610 sets forth circumstances under which the property of a foreign state is not immune from attachment or execution to satisfy a judgment. Though the enforcement of judgments against foreign state property remains a somewhat controversial subject in international law, there is a marked trend toward limiting the immunity from execution.

A number of treaties of friendship, commerce, and navigation concluded by the United States permit execution of judgments against foreign publicly-owned or controlled enterprises (e.g., Treaty with Japan, April 2, 1953, Art. 18(2), 4 UST 2063, TIAS 2863). The widely ratified Brussels Convention for the Unification of Certain Rules relating to the Immunity of State-Owned Vessels, April 10, 1926, 196 L.N.T.S. 199, allows execution of judgments against public vessels engaged in commercial service in the same way as against privately owned vessels.

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Although not a party to this treaty, the United States follows a policy of not claiming immunity for its publicly owned merchant vessels, both domestically, 46 U.S.C. 742, 781, and abroad, 46 U.S.C. 747; 2 Hackworth, Digest of International Law, 438-39 (1941). Articles 20 and 21 of the Geneva Convention on the Territorial Sea and the Contiguous Zone, April 29, 1958 (15 UST 1606, TIAS 5639), to which the United States is a party, recognize the liability to execution under appropriate circumstances of state-owned vessels used in commercial service.

However, the traditional view in the United States concerning execution has been that the property of foreign states is absolutely immune from execution. Dexter and Carpenter, Inc. v. Kunglig Jarnvagsstyrelsen, 43 F.2d 705 (2d Cir. 1930). Even after the "Tate Letter" of 1952, this continued to be the position of the Department of State and of the courts. See, Weilamann v. Chase Manhattan Bank, 21 Misc. 2d 1086, 192 N.Y.S.2d 469, 473 (Sup. Ct. N.Y. 1959). Sections 1610(a) and (b) are intended to modify this rule by partially lowering the barrier of immunity to execution, so as to make this immunity conform more closely with the provisions on jurisdictional immunity in the bill.

(a) Execution Against Property of Foreign States. Section 1610(a) relates to execution against property of a foreign state, including a political subdivision, agency or instrumentality of a foreign state. The term "attachment in aid of execution" is intended to include attachments, garnishments and supplemental proceedings available under applicable federal or state law to obtain satisfaction of a judgment. See Rule 69, F.R. Civ. P. The property in question must be used for a commercial activity in the United States. If so, attachment in aid of execution, and execution, upon judgments entered by federal or state courts against the foreign state would be permitted in any of the circumstances set forth in paragraphs (1) - (5) of Section 1610(a).

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Paragraph (1) relates to explicit and implied waivers, and is governed by the same principles that apply to waivers of immunity from jurisdiction under Section 1605(a)(1) of the bill. A foreign state may have waived its immunity from execution inter alia by the provisions of a treaty, a contract, an official statement, or certain steps taken by the foreign state in the proceedings leading to judgment or to execution. As in Section 1605(a)(1), a waiver on behalf of an agency or instrumentality of a foreign state may be made either by the agency or instrumentality or by the foreign state itself.

Paragraph (2) of Section 1610(a) denies immunity from execution against property used by a foreign state for a commercial activity in the United States, provided that the commercial activity gave rise to the claim upon which the judgment is based. Included would be commercial activities encompassed by Section 1605(a)(2). The provision also includes a commercial activity giving rise to a claim with respect to which the foreign state has waived immunity under Sections 1605(a)(1). In addition, it includes a commercial activity which gave rise to a maritime lien with respect to which an admiralty suit was brought under Section 1605(b). One could, of course, execute against commercial property other than a vessel or cargo which is the subject of a suit under Section 1605(b), provided that the property was used in the same commercial activity upon which the maritime lien was based.

The language "is or was used" in paragraph (2) contemplates a situation where property may be transferred from the commercial activity which is the subject of the suit in an effort to avoid the process of the court. This language, however, does not bear on the question of whether particular property is to be deemed property of the entity against which the judgment was obtained. The courts will have to determine whether property in the custody of an agency or instrumentality is property of the agency or instrumentality, whether

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property held by one agency should be deemed to be property of another, whether property held by an agency is property of the foreign state. See Prelude Corp. v. Owners of F/V Atlantic, 1971 A.M.C. 2651 (N.D. Calif.); American Hawaiian Ventures v. M.V.J. Latuharhary, 257 F. Supp. 622, 626 (D.N.J. 1966).

Paragraph (3) would deny immunity from execution against property of a foreign state which is used for a commercial activity in the United States and which has been taken in violation of international law or has been exchanged for property taken in violation of international law. See the analysis to Section 1605(a)(3).

Paragraph (4) would deny immunity from execution against property of a foreign state which is used for a commercial activity in the United States and is either acquired by succession or gift or is immovable. Specifically exempted are diplomatic and consular missions and the residence of the chiefs of such missions. This exemption applies to all of the situations encompassed by Sections 1610(a) and (b): embassies and related buildings could not be deemed to be property used for a "commercial" activity as required by Section 1610(a); also, since such buildings are those of the foreign state itself, they could not be property of an agency or instrumentality engaged in a commercial activity in the United States within the meaning of Section 1610(b).

Paragraph (5) of Section 1610(a) would deny immunity with respect to obligations owed to a foreign state under a policy of liability insurance. Such obligations would after judgment be treated as property of the foreign state subject to garnishment or related remedies in aid or in place of execution. The availability of such remedies would, of course, be governed by applicable state or federal law. Paragraph (5) is intended to facilitate recovery by individuals who may be injured in accidents, including those involving vehicles operated

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by a foreign state or by its officials or employees acting within the scope of their authority.

(b) Additional Execution Against Agencies and Instrumentalities Engaged in Commercial Activity in the United States. Section 1610(b) provides for execution against the property of agencies or instrumentalities of a foreign state in circumstances additional to those provided in Section 1610(a). However, the agency or instrumentality must be engaged in a commercial activity in the United States. If so, the plaintiff may obtain an attachment in aid of execution or execution against any property, commercial and noncommercial, of the agency or instrumentality, but only in the circumstances set forth in paragraphs (1) and (2).

Paragraph (1) denies immunity from execution against any property of an agency or instrumentality engaged in a commercial activity in the United States, where the agency or instrumentality has waived its immunity from execution. See the analysis to paragraph (1) of Section 1610(a).

Paragraph (2) of Section 1610(b) denies immunity from execution against any property of an agency or instrumentality engaged in a commercial activity in the United States in order to satisfy a judgment relating to a claim for which the agency or instrumentality is not immune by virtue of Section 1605(a)(2), (3) or (5), or 1605(b). Property will be subject to execution irrespective of whether the property was used for the same commercial or other activity upon which the claim giving rise to the judgment was based.

Section 1610(b) will not permit execution against the property of one agency or instrumentality to satisfy a judgment against another, unrelated agency or instrumentality. See Prelude Corp. v. Owners of F/V Atlantic, 1941 A.M.C. 2651 (N.D. Calif.). There are compelling reasons for this.

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If United States law did not respect the separate juridical identities of different agencies or instrumentalities, it might encourage foreign jurisdictions to disregard the juridical divisions between different U.S. corporations or between a U.S. corporation and its independent subsidiary. However, a court might find that property held by one agency is really the property of another. See the analysis to Section 1610(a)(2).

(c) Necessity of Court Order Following Reasonable Notice. Section 1610(c) prohibits attachment or execution under Sections 1610(a) and (b) unless the court has issued an order for such attachment and execution. In some jurisdictions in the United States, attachment and execution to satisfy a judgment may be had simply by applying to a clerk or to a local sheriff. This would not afford sufficient protection to a foreign state. This subsection contemplates that the courts will exercise their discretion in permitting execution. Prior to ordering attachment and execution, the court must determine that a reasonable period of time has elapsed following the entry of judgment, or in cases of a default judgment, since notice of the judgment was given to the foreign state under Section 1608(e). In determining whether the period has been reasonable, the courts should take into account procedures, including legislation, that may be necessary for payment of a judgment by a foreign state, which may take several months. Courts should also take into account representations by the foreign state of steps being taken to satisfy the judgment.

(d) Attachments Upon Explicit Waiver to Secure Satisfaction of a Judgment. Section 1610(d) relates to attachment against the property of a foreign state, or of a political subdivision, agency or instrumentality of a foreign state, prior to the entry of judgment or prior to the lapse of the "reasonable period of time" required under Section 1610(c). Immunity from attachment will be

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denied only if the foreign state, political subdivision, agency or instrumentality has explicitly waived its immunity from attachment prior to judgment, and only if the purpose of the attachment is to secure satisfaction of a judgment that has been or may ultimately be entered against the foreign state, etc., in the same action. This subsection provides, in cases where there has been an explicit waiver, a provisional remedy to prevent assets from being dissipated or removed from the jurisdiction in order to frustrate satisfaction of a judgment.

Section 1611. Certain Types of Property Immune From Execution.

Section 1611 exempts certain types of property from the immunity provisions of Section 1610 relating to attachment and execution.

(a) Property Held by International Organizations. Section 1611(a) precludes attachment and execution against funds and other property of certain international organizations. The purpose of this subsection is to permit international organizations designated by the President pursuant to the International Organizations Immunity Act, 22 U.S.C. 288 et seq., to carry out their functions from their offices located in the United States without hinderance by private claimants seeking to attach the payment of funds to a foreign state; such attachments would also violate the immunities accorded to such international institutions. See also Art. 9, Section 3 of the Articles of Agreement of the International Monetary Fund. International organizations covered by this provision would include, inter alia, the International Monetary Fund and the World Bank. The reference to "international organizations" in this subsection is not intended to restrict any immunity accorded to such international organizations under any other law or international agreement.

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(b) Central Bank Funds and Military Property.

Section 1611(b)(1) provides for the immunity of central bank funds from attachment or execution. It applies to funds of a foreign central bank or monetary authority which are deposited in the United States and "held" for the bank's or authority's "own account" -- i.e., funds used or held in connection with central banking activities, as distinguished from funds used solely to finance the commercial transactions of other entities or of foreign states. If execution could be levied on such funds without an explicit waiver, deposit of foreign funds in the United States might be discouraged. Moreover, execution against the reserves of foreign states could cause significant foreign relations problems.

Section 1611(b)(2) provides immunity from attachment and execution for property which is, or is intended to be, used in connection with a military activity and which fulfills either of two conditions: the property is either (A) of a military character or (B) under the control of a military authority or defense agency. Under the first condition, property is of a military character if it consists of equipment in the broad sense -- such as weapons, ammunition, military transport, warships, tanks, communications equipment. Both the character and the function of the property must be military. The purpose of this condition is to avoid frustration of United States foreign policy in connection with purchases of military equipment and supplies in the United States by foreign governments.

The second condition is intended to protect other military property, such as food, clothing, fuel and office equipment which, although not of a military character, is essential to military

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operations. "Control" is intended to include authority over disposition and use in addition to physical control, and a "defense agency" is intended to include civilian defense organizations comparable to the Defense Supply Agency in the United States. Each condition is subject to the overall condition that property will be immune only if its present or future use is military (e.g., surplus military equipment withdrawn from military use would not be immune). Both conditions will avoid the possibility that a foreign state might permit execution on military property of the United States abroad under a reciprocal application of the Act.

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SEC 5. Venue.

This section amends 28 U.S.C. § 1391, which deals with venue generally. Under the new subsection (f), there are four express provisions for venue in civil actions brought against foreign states, political subdivisions or their agencies or instrumentalities.

(1) The action may be brought in the judicial district where "a substantial part of the events or omissions giving rise to the claim occurred." This provision is analogous to 28 U.S.C. § 1391(e), which allows an action against the United States to be brought, inter alia, in any judicial district in which "the cause of action arose." The test adopted, however, is the newer test recommended by the American Law Institute and incorporated in S. 1876, 92d Cong., 1st Sess., which does not imply that there is only one such district applicable in each case.

In cases where property or rights in property are involved, the action may be brought in the judicial district in which "a substantial part of the property that is the subject of the action is situated." No hardship will be caused to the foreign state if it is subject to suit where it has chosen to place the property that gives rise to the dispute.

(2) If the action is a suit in admiralty to enforce a maritime lien against a vessel or a cargo of a foreign state and if the action is brought under the new Section 1605(b) in this bill, the action may be brought in the judicial district in which the vessel or cargo is situated at the time notice is served pursuant to Section 1605(b)(1).

(3) If the action is brought against an agency or instrumentality of a foreign state, as defined in the new Section 1603(b) in the bill, it may be brought in the judicial district where the agency or instrumentality is licensed to do business or is doing business. This provision is based on 28 U.S.C. § 1391(c).

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(4) If the action is brought against a foreign state or political subdivision, it may be brought in the United States District Court for the District of Columbia. It is in the District of Columbia that foreign states have diplomatic representatives and where it may be easiest for them to defend. New subsection (f) would, of course, not apply to entities that are owned by a foreign state and are also citizens of a state of the United States as defined in 28 U.S.C. 1332(c) and (d). For purposes of this bill, such entities are not agencies or instrumentalities of a foreign state. See the analysis to Section 1603(b).

As with other provisions in 28 U.S.C. 1391, venue under the new subsection (f) could be waived by a foreign state, such as by failing to object to improper venue in a timely manner. See Rule 12 (h), F.R. Civ. P.

SEC. 6. Removal of Cases from State Courts.

The bill adds a new provision to 28 U.S.C. 1441 to provide for removal to a federal district court of civil actions brought in the courts of the state against a foreign state or a political subdivision, agency or instrumentality of a foreign state. In view of the potential sensitivity of actions against foreign states and the importance of developing a uniform body of law in this area, it is important to give foreign states clear authority to remove to a federal forum actions brought against them in the state courts. New subsection (d) of Section 1441 permits the removal of any such action at the discretion of the foreign state, even if there are multiple defendants and some of these defendants desire not to remove the action or are citizens of the state in which the action has been brought.

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As with other removal provisions, a petition for removal must be filed with the appropriate district court in a timely manner. 28 U.S.C. 1446. However, in view of the 60 day period provided in Section 1608(c) in the bill and in view of the bill's preference that actions involving foreign states be tried in federal courts, the time limitations for filing a petition of removal under 28 U.S.C. 1446 may be extended "at any time" for good cause shown.

Upon removal, the action would be heard and tried by the appropriate district court sitting without a jury. Cf. 28 U.S.C. 2402, precluding jury trials in suits against the United States. Thus, one effect of removing an action under the new Section 1441(d) will be to extinguish a demand for a jury trial made in the state court. Cf. Rule 81(c), F.R. Civ. P. Because the judicial power of the United States specifically encompasses actions "between a State, or the Citizens thereof, and foreign States" (U.S. Constitution, Art. III, Sec. 2, Cl. 1), this preemption of state court procedures in cases involving foreign sovereigns is clearly constitutional.

This section, again, would not apply to entities owned by a foreign state which are citizens of a state of the United States as defined in 28 U.S.C. 1332(c) and (d), or created under the laws of a third country.

SEC. 7. Severability of Provisions

This action provides that if a portion of the Act of any application of the Act should be found invalid for any reason, such invalidity would not affect any other provision or application of the Act.

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SEC. 8. Effective Date.

This section establishes that the effective date of the Act shall be 90 days after it becomes law. A 90-day period is deemed necessary in order to give adequate notice of the Act and its detailed provisions to all foreign states.

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A B I L L

To define the jurisdiction of United States courts in suits against foreign states, the circumstances in which foreign states are immune from suit and in which execution may not be levied on their property, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

That this Act may be cited as the "Foreign Sovereign Immunities Act of 1975."

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SEC. 2 (a) That chapter 85 of title 28, United States Code, is amended by inserting immediately before section 1331 the following new section:

"§1330. Actions against foreign states

"(a) The district courts shall have original jurisdiction without regard to amount in controversy of any nonjury civil action against a foreign state as defined in section 1603(a) of this title as to any claim for relief in personam with respect to which the foreign state is not entitled to immunity either under sections 1605-1607 of this title or under any applicable international agreement.

"(b) Personal jurisdiction over a foreign state shall exist as to every claim for relief over which the district courts have jurisdiction under subsection (a) where service of process has been made under section 1608 of this title.

"(c) For purposes of subsection (b), an appearance by a foreign state does not confer personal jurisdiction with respect to any claim for relief not arising out of any transaction or occurrence enumerated in sections 1605-1607 of this title."; and

(b) by inserting in the chapter analysis of that chapter before -

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"1331. Federal question; amount in controversy; costs."

the following new item:

"1330. Actions against foreign states.".

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SEC. 3. That section 1332 of title 28, United States Code, is amended by striking subsections (a)(2) and (3) and substituting in their place the following:

"(2) citizens of a State and citizens or subjects of a foreign state;

"(3) citizens of different States and in which citizens or subjects of a foreign state are additional parties; and

"(4) a foreign state, defined in section 1603(a) of this title, as plaintiff and citizens of a State or of different States."

ATTACHMENT A TO DEFENDANTS' MEMORANDUM OF LAW

SEC. 4 (a) That title 28, United States Code, is amended by inserting after chapter 95 the following new chapter:

"Chapter 97. - JURISDICTIONAL IMMUNITIES OF
FOREIGN STATES

"Sec.

"1602. Findings and declaration of purpose.

"1603. Definitions.

"1604. Immunity of a foreign state from jurisdiction.

"1605. General exceptions to the jurisdictional immunity of a foreign state.

"1606. Claims involving the public debt.

"1607. Counterclaims.

"1608. Service of process; time to answer; default.

"1609. Immunity from attachment and execution of property of a foreign state.

"1610. Exceptions to the immunity from attachment or execution.

"1611. Certain types of property immune from execution.

ATTACHMENT A TO DEFENDANTS' MEMORANDUM OF LAW

"§1602. Findings and declaration of purpose

"The Congress finds that the determination by United States courts of the claims of foreign states to immunity from the jurisdiction of such courts would serve the interests of justice and would protect the rights of both foreign states and litigants in United States courts. Under international law, states are not immune from the jurisdiction of foreign courts in so far as their commercial activities are concerned, and their commercial property may be levied upon for the satisfaction of judgments rendered against them in connection with their commercial activities. Claims of foreign states to immunity should henceforth be decided by courts of the United States and of the States in conformity with the principles set forth in this chapter.

ATTACHMENT A TO DEFENDANTS' MEMORANDUM OF LAW

"§ 1603 Definitions

"For purposes of this chapter -

"(a) a 'foreign state', except as used in sections 1606 and 1608 of this title, includes a political subdivision of a foreign state or an agency or instrumentality of a foreign state as defined in subsection (b).

"(b) an 'agency and instrumentality of a foreign state' means any entity

"(1) which is a separate legal person, corporate or otherwise, and

"(2) which is an organ of a foreign state or political subdivision thereof, or a majority of whose shares or other ownership interest is owned by a foreign state or political subdivision thereof, and

"(3) which is neither a citizen of a State of the United States as defined in sections 1332 (c) and (d) of this title, nor created under the laws of any third country.

ATTACHMENT A TO DEFENDANTS' MEMORANDUM OF LAW

"(c) the 'United States' includes all territory and waters, continental or insular, subject to the jurisdiction of the United States.

"(d) a 'commercial activity' means either a regular course of commercial conduct or a particular commercial transaction or act. The commercial character of an activity shall be determined by reference to the nature of the course of conduct or particular transaction or act, rather than by reference to its purpose.

"(e) a 'commercial activity carried on in the United States by a foreign state' means commercial activity carried on by such state and having substantial contact with the United States.

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"§ 1604. Immunity of a foreign state from jurisdiction

"Subject to existing and future international agreements to which the United States is a party, a foreign state shall be immune from the jurisdiction of the courts of the United States and of the States except as provided in sections 1605-1607 of this chapter.

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"§ 1605. General exceptions to the jurisdictional immunity of a foreign state

"(a) A foreign state shall not be immune from the jurisdiction of courts of the United States or of the States in any case -

"(1) in which the foreign state has waived its immunity either explicitly or by implication, notwithstanding any withdrawal of the waiver which the foreign state may purport to effect except in accordance with the terms of the waiver;

"(2) in which the action is based upon a commercial activity carried on in the United States by the foreign state; or upon an act performed in the United States in connection with a commercial activity of the foreign state elsewhere; or upon an act outside the territory of the United States in connection with a commercial activity of the foreign state elsewhere and that act causes a direct effect in the United States;

"(3) in which rights in property taken in violation of international law are in issue and that property or any property exchanged for such

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property is present in the United States in connection with a commercial activity carried on in the United States by the foreign state; or that property or any property exchanged for such property is owned or operated by an agency or instrumentality of the foreign state and that agency or instrumentality is engaged in a commercial activity in the United States;

"(4) in which rights in property in the United States acquired by succession or gift or rights in immovable property situated in the United States are in issue; or

"(5) not otherwise encompassed in paragraph (2) above, in which money damages are sought against a foreign state for personal injury or death, or damage to or loss of property, occurring in the United States and caused by the tortious act or omission of that foreign state or of any official or employee of that foreign state while acting within the scope of his office or employment; except this paragraph shall not apply to

"(A) any claim based upon the exercise or performance or the failure to exercise

ATTACHMENT A TO DEFENDANTS' MEMORANDUM OF LAW

or perform a discretionary function regardless of whether the discretion be abused, or

"(B) any claim arising out of malicious prosecution, abuse of process, libel, slander, misrepresentation, deceit, or interference with contract rights:

"(b) A foreign state shall not be immune from the jurisdiction of the courts of the United States in any case in which a suit in admiralty is brought to enforce a maritime lien against a vessel or cargo of the foreign state, which maritime lien is based upon a commercial activity of the foreign state, provided that

"(1) notice of the suit is given by service of a copy of the summons and of the complaint to the person, or his agent, having possession of the vessel or cargo against which the maritime lien is asserted; but such notice shall not be deemed to have been served, nor may it thereafter be served, if the vessel or cargo is arrested pursuant to process obtained on behalf of the party bringing the suit -- unless the party was unaware that the vessel or cargo of a foreign state was involved, in which event the service

ATTACHMENT A TO DEFENDANTS' MEMORANDUM OF LAW

of process of arrest shall be deemed to constitute valid service of such notice; and

"(2) notice to the foreign state of the commencement of suit as provided in section 1608 of this title is initiated within ten days of the service of process as provided in subsection (b)(1) of this section.

"Whenever notice is served under subsection (b)(1) of this section, the maritime lien shall thereafter be deemed to be an in personam claim against the foreign state which at that time owns the vessel or cargo involved; provided that a court may not award judgment against the foreign state in an amount greater than the value of the vessel or cargo upon which the maritime lien arose, such value to be determined as of the time notice is served under subsection (b)(1) of this section.

"(c) As to any claim for relief with respect to which a foreign state is not entitled to immunity under this section or under sections 1606 or 1607 of this chapter, the foreign state shall be liable in the same manner and to the same extent as a private individual under like circumstances; but a foreign state itself,

ATTACHMENT A TO DEFENDANTS' MEMORANDUM OF LAW

as distinguished from a political subdivision thereof or from an agency or instrumentality of a foreign state, shall not be liable in tort for interest prior to judgment or for punitive damages;

"If, however, in any case wherein death was caused, the law of the place where the action or omission occurred provides, or has been construed to provide, for damages only punitive in nature, the foreign state shall be liable for actual or compensatory damages measured by the pecuniary injuries resulting from such death which were incurred by the persons for whose benefit the action was brought.

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"§ 1606. Claims involving the public debt

"(a) For purposes of this section, a 'foreign state' shall not include a political subdivision of a foreign state or an agency or instrumentality of a foreign state.

"(b) Notwithstanding the provisions of section 1605 of this chapter, a foreign state shall be immune from the jurisdiction of the courts of the United States and of the States in any case relating to debt obligations incurred for general governmental purposes unless -

"(1) the foreign state has waived its immunity explicitly, notwithstanding any withdrawal of the waiver which the foreign state may purport to effect except in accordance with the terms of the waiver; or

"(2) the case arises under provisions codified as sections 77a through 80b-21 of title 15, United States Code, as amended, or any other statute which may hereafter be administered by the United States Securities and Exchange Commission.

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"§ 1607. Counterclaims

"In any action brought by a foreign state, or in which a foreign state intervenes, in a court of the United States or of a State, the foreign state shall not be accorded immunity with respect to any counterclaim

"(a) for which a foreign state would not be entitled to immunity under sections 1605 and 1606 of this chapter had such claim been brought in a separate action against the foreign state; or

"(b) arising out of the transaction or occurrence that is the subject matter of the claim of the foreign state; or

"(c) to the extent that the counterclaim does not seek relief exceeding in amount or differing in kind from that sought by the foreign state.

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"1608. Service of process; time to answer; default

"Subject to existing and future international agreements to which the United States is a party -

"(a) service in the courts of the United States and of the States shall be made upon a foreign state or political subdivision of a foreign state:

"(1) by delivering a copy of the summons and of the complaint in accordance with any special arrangement for service between the plaintiff and the foreign state or political subdivision; or

"(2) if no special arrangement exists, and if service is reasonably calculated to give actual notice,

"(A) by service of a copy of the summons and of the complaint, together with a translation into the official language of the foreign state, as directed by an authority of the foreign state or of the political subdivision in response to a letter rogatory or request, or

"(B) by sending a copy of the summons and of the complaint, together with a translation into the official language of the

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foreign state, by any form of mail requiring a signed receipt, to be addressed and dispatched by the clerk of the court to the official in charge of the foreign affairs of the foreign state which is, or whose political subdivision is, named in the complaint; or

"(3) if proof of service is not made within 60 days after service has been initiated under paragraphs (1) or (2) of this subsection, and if

"(A) the claim for relief arises out of an activity or act in the United States of a diplomatic or consular representative of the foreign state for which the foreign state is not immune from jurisdiction under section 1605 of this title, or

"(B) the foreign state uses diplomatic channels for service upon the United States or any other foreign state, or

"(C) the foreign state has not notified the Secretary of State prior to the institution of the proceeding in question that it prefers that service not be made through diplomatic channels,

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by sending two copies of the summons and of the complaint, together with a translation into the official language of the foreign state, by any form of mail requiring a signed receipt, to be addressed and dispatched by the clerk of the court, to the Secretary of State at Washington, District of Columbia, to the attention of the Director of Special Consular Services, and the Secretary shall send one copy through diplomatic channels to the foreign state and shall send a certified copy of the diplomatic note to the clerk of the court in which the action is pending. The Secretary shall maintain and publish in the Federal Register a list of foreign states upon which service may be made under subparagraphs (B) and (C) of this paragraph, and such list shall be conclusive for purposes of subparagraphs (B) and (C);

"(b) service in the courts of the United States and of the States shall be made upon an agency or instrumentality of a foreign state:

"(1) by delivering a copy of the summons and of the complaint in accordance with any special arrangement for service between the plaintiff and the agency or instrumentality; or

ATTACHMENT A TO DEFENDANTS' MEMORANDUM OF LAW

"(2) if no special arrangement exists, by delivering a copy of the summons and of the complaint to an officer, a managing or general agent or to any other agent authorized by appointment or by law to receive service of process in the United States; or

"(3) if service cannot be made under paragraphs (1) or (2) of this subsection, and if service is reasonably calculated to give actual notice,

"(A) by service of a copy of the summons and of the complaint, together with a translation into the official language of the foreign state, as directed by an authority of the foreign state or of a political subdivision in response to a letter rogatory or request, or

"(B) by sending a copy of the summons and of the complaint, together with a translation into the official language of the foreign state, by any form of mail requiring a signed receipt, to be addressed and dispatched by the clerk of the court to the agency or instrumentality to be served, or

"(C) as directed by order of the court consistent with the law of the place where service is to be made;

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"(c) for the purposes of this section, service of process shall be deemed to have been made -

"(1) in the case of subsections (a)(1) and (b)(1), when delivered in accordance with the terms of the special arrangement;

"(2) in the case of subsections (a)(2)(A) and (b)(3)(A), when delivered as directed by an authority of the foreign state or political subdivision;

"(3) in the case of subsections (a)(2)(B) and (b)(3)(B), when received abroad by mail, as evidenced by the returned, signed receipt;

"(4) in the case of subsection (b)(2), when delivered to an officer, managing or general agent or appointed agent in the United States;

"(5) in the case of subsection (a)(3), when sent through diplomatic channels, as evidenced by a certified copy of the diplomatic note of transmittal;

"(6) in the case of subsection (b)(3)(C), when served as directed by order of the court.

"(d) in any action brought in a court of the United States or of a State, a foreign state, a political subdivision thereof, or an agency or

ATTACHMENT A TO DEFENDANTS' MEMORANDUM OF LAW

instrumentality of a foreign state shall serve an answer or other responsive pleading to the complaint or to a cross-claim, or a reply to a counterclaim, within 60 days after the service of the pleading in which a claim is asserted; and

"(e) no judgment by default shall be entered by a court of the United States or of a State against a foreign state, a political subdivision thereof, or an agency or instrumentality of a foreign state, unless the claimant establishes his claim or right to relief by evidence satisfactory to the court. A copy of any such default judgment shall be sent to the foreign state or political subdivision in the manner prescribed for service of process in this section.

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"§ 1609. Immunity from attachment and execution of
property of a foreign state

"Subject to existing and future international
agreements to which the United States is a party,
the property in the United States of a foreign state
shall be immune from attachment and from execution
except as provided in sections 1610 and 1611 of this
chapter.

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"§ 1610. Exceptions to the immunity from attachment or execution

"(a) The property in the United States of a foreign state, as defined in section 1603(a) of this chapter, used for a commercial activity in the United States, shall not be immune from attachment in aid of execution, or from execution, upon a judgment entered by a court of the United States or of a State after the effective date of this Act, if -

"(1) the foreign state has waived its immunity from attachment in aid of execution or from execution either explicitly or by implication, notwithstanding any withdrawal of the waiver the foreign state may purport to effect except in accordance with the terms of the waiver," or

"(2) the property is or was used for the commercial activity upon which the claim is based, or

"(3) the execution relates to a judgment establishing rights in property which has been taken in violation of international law or which has been exchanged for property taken in violation of international law, or

"(4) the execution relates to a judgment establishing rights in property -

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"(A) which is acquired by succession or gift, or

"(B) which is immovable and situated in the United States, provided such property is not used for purposes of maintaining a diplomatic or consular mission or the residence of the Chief of such mission, or

"(5) the property consists of any contractual obligation or any proceeds from such a contractual obligation to indemnify or hold harmless the foreign state or its employees under a policy of automobile or other liability or casualty insurance covering the claim which merged into the judgment.

"(b) In addition to subsection (a), any property in the United States of an agency or instrumentality of a foreign state engaged in commercial activity in the United States shall not be immune from attachment in aid of execution, or from execution, upon a judgment entered by a court of the United States or of a State after the effective date of this Act, if -

"(1) the agency or instrumentality has waived its immunity from attachment in aid of

ATTACHMENT A TO DEFENDANTS' MEMORANDUM OF LAW

execution or from execution either explicitly or implicitly, notwithstanding any withdrawal of the waiver the agency or instrumentality may purport to effect except in accordance with the terms of the waiver, or

"(2) the judgment relates to a claim for which the agency or instrumentality is not immune by virtue of sections 1605(a)(2), (3) or (5), or 1605(b) of this chapter, regardless of whether the property is or was used for the activity upon which the claim is based.

"(c) No attachment or execution referred to in subsections (a) and (b) of this section shall be permitted until the court has ordered such attachment and execution after having determined that a reasonable period of time has elapsed following the entry of judgment and the giving of any notice required under section 1608(e) of this chapter.

"(d) The property of a foreign state, as defined in section 1603(a) of this chapter, used for a commercial activity in the United States, shall not be immune from attachment prior to the entry of judgment in any action brought in a court of the United States or of a State, or prior to the elapse of the period of time provided in subsection (c) of this section, if -

ATTACHMENT A TO DEFENDANTS' MEMORANDUM OF LAW

"(1) the foreign state has explicitly waived its immunity from attachment prior to judgment, notwithstanding any withdrawal of the waiver the foreign state may purport to effect except in accordance with the terms of the waiver, and

"(2) the purpose of the attachment is to secure satisfaction of a judgment that has been or may ultimately be entered against the foreign state, and not to obtain jurisdiction.

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"§ 1611. Certain types of property immune from execution

"(a) Notwithstanding the provisions of section 1610 of this chapter, the property of those organizations designated by the President as being entitled to enjoy the privileges, exemptions, and immunities provided by the International Organizations Immunities Act shall not be subject to attachment or any other judicial process impeding the disbursement of funds to, or on the order of, a foreign state as the result of an action brought in the courts of the United States or of the States.

"(b) Notwithstanding the provisions of section 1610 of this chapter, the property of a foreign state shall be immune from attachment and from execution, if -

"(1) the property is that of a foreign central bank or monetary authority held for its own account, unless such bank or authority, or its parent foreign government, has explicitly waived its immunity from attachment in aid of execution, or from execution, notwithstanding any withdrawal of the waiver which the bank, authority or government may purport to effect except in accordance with the terms of the waiver; or

ATTACHMENT A TO DEFENDANTS' MEMORANDUM OF LAW

"(2) the property is, or is intended to be,
used in connection with a military activity and

"(A) is of a military character, or

"(B) is under the control of a

military authority or defense agency."; and

(b) That the analysis of "Part IV. - Jurisdiction
and Venue" of Title 28, United States Code, is amended
by inserting after --

"95. Customs Court.",

the following new item:

"97. Jurisdictional Immunities of Foreign States.".

ATTACHMENT A TO DEFENDANTS' MEMORANDUM OF LAW

SEC. 5. That section 1391 of title 28, United States Code, is amended by adding at the end thereof the following new subsection:

"(f) A civil action against a foreign state as defined in section 1603(a) of this title may be brought --

"(1) in any judicial district in which a substantial part of the events or omissions giving rise to the claim occurred, or a substantial part of property that is the subject of the action is situated;

"(2) in any judicial district in which the vessel or cargo of a foreign state is situated, if the claim is asserted under section 1605(b) of this title;

"(3) in any judicial district in which the agency or instrumentality is licensed to do business or is doing business, if the action is brought against an agency or instrumentality of a foreign state as defined in section 1603(b) of this title; or

"(4) in the United States District Court for the District of Columbia if the action is brought against a foreign state or political subdivision thereof.

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SEC. 6. That section 1441 of title 28, United States Code, is amended by adding at the end thereof the following new subsection:

"(d) Any civil action brought in a State court against a foreign state as defined in section 1603(a) of this title may be removed by the foreign state to the district court of the United States for the district and division embracing the place where such action is pending. Upon removal the action shall be tried by the court without jury. Where removal is based upon this subsection, the time limitations of section 1446(b) of this chapter may be enlarged at any time for cause shown."

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SEC. 7. If any provision of this Act or the application thereof to any foreign state is held invalid, the invalidity does not affect other provisions or applications of the Act which can be given effect without the invalid provision or application, and to this end the provisions of this Act are severable.

100a

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SEC. 8. This Act shall take effect ninety days
after the date of its enactment.

101a

AFFIDAVIT OF JAMES D. VEACH IN OPPOSITION TO DEFENDANTS'
MOTION.

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

-----x

MARGIE L. UPTON, Individually and
as Administratrix of the Estate of
LARRY L. UPTON, deceased, et al.,

Plaintiffs,

75 Civ. 2914 (CMM)

-against-

THE DEPARTMENT OF CIVIL AVIATION
OF THE EMPIRE OF IRAN,

PLAINTIFFS' AFFIDAVIT
IN OPPOSITION TO DEFEN-
DANTS' MOTION TO QUASH
SERVICE AND TO DISMISS
FOR LACK OF JURISDICTION

-and-

THE EMPIRE OF IRAN,

Defendants.

-----x

STATE OF NEW YORK)
) ss.:
COUNTY OF NEW YORK)

James D. Veach, being duly sworn, deposes and says
that:

1. I am an attorney, associated with the firm of
Kreindler & Kreindler, counsel for plaintiffs Margie L.
Upton, et al., and as such am fully familiar with the facts
and circumstances of this case. This affidavit and accom-
panying memorandum of law is submitted in opposition to the

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Empire of Iran and the Department of Civil Aviation of the Empire of Iran's [hereinafter Empire and Dep't., respectively] Motion to Quash Service and to Dismiss for Lack of Jurisdiction.

2. The within action arises out of the deaths of two American citizens and the serious injury of a third American as the result of the collapse of the roof of the Main Hall of the Terminal Building at the Mehrabad International Airport, Tehran, Iran on December 5, 1974 [Complaint ¶¶4, 5, 6 & 16].

3. Plaintiffs to the within action are the wife and three surviving minor children of Larry L. Upton, deceased, the wife and mother of Michael John Nimtz, deceased and Alfred E. Caswell, all American citizens [Complaint ¶¶2, 8, 12, 13 & 17].

4. Each of the said plaintiffs contend that the collapse of the roof of the Main Hall of the Terminal Building at the Mehrabad International Airport, Tehran, Iran is attributable to the defendants' having "negligently, carelessly and recklessly owned, operated, maintained and controlled, failed properly to assist in or supervise the construction of and failed adequately to inspect the said building and its subsequent modification [Complaint ¶¶7, 11 & 15]."

AFFIDAVIT OF JAMES D. VEACH IN OPPOSITION TO DEFENDANTS'
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5. Plaintiffs contend that the defendants Empire and Dep't. were otherwise negligent and strictly liable on the grounds that plaintiff Caswell and plaintiffs' decedents were, at the time of their deaths, within the said public building as members of the public to whom the defendants owed an absolute duty of care [Complaint ¶¶7, 11 & 15].

6. On or about June 29, 1976, I placed a telephone call to the Consulate General of Iran, 630 Fifth Avenue, New York, New York 10030 and asked for the office of the Legal Counsel. I was transferred to a Ms. Khorvash and advised her that a United States Marshal would be coming to the Embassy with a Summons and Complaint. I inquired as to who would accept the said Summons and Complaint. Ms. Khorvash indicated they could be left with her. For this reason, her name appeared on the Marshal's Notice of Service and, on this basis, plaintiffs maintain they obtained implied consent for such service.

7. On July 8, 1976, United States Marshal or Deputy Marshal Sabattello, personally served Ms. Khorvash at the Consulate General of Iran, 630 Fifth Avenue, New York, New York 10030, having personally appeared at the Consulate General on July 2, 1976 and, according to the U.S. Marshal's Service Process Receipt and Return, attached to Plaintiffs' Affidavit as Exhibit "A", left a notice.

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8. On July 8, 1976, United States Marshal or Deputy Marshal Devito personally served a male, 5'4" tall, with blonde hair, who described himself as the manager of the Iran National Airlines Corporation [hereinafter Iran Air] office at 345 Park Avenue, New York, New York 10022. U.S. Marshal's Service Process Receipt and Return attached to Plaintiffs' Affidavit as Exhibit "B".

9. On June 29, 1976, counsel for plaintiffs enclosed in a letter sent to Mr. A. Moshaveghzadeh, Office of the Legal Counsel, The Imperial Embassy of Iran, 3005 Massachusetts Avenue, N.W., Washington D.C. 20008, via registered mail, return receipt requested, a copy of the Summons and Complaint subsequently personally served on the Consulate General of Iran and Iran Air. A copy of the said letter which indicated that personal service would be effected upon (1) the Consulate General of Iran, (2) the Permanent Mission of Iran to the United Nations and (3) Iran Air is annexed to Plaintiffs' Affidavit of Service, attached to Plaintiffs' Affidavit as Exhibit "C". Mr. Moshaveghzadeh's name had been obtained through a telephone call placed by counsel for plaintiffs made on or about June 29, 1976 to the Imperial Embassy of Iran in Washington, D.C.

AFFIDAVIT OF JAMES D. VEACH IN OPPOSITION TO DEFENDANTS'
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10. On July 8, 1976, Mr. Moshaveghzadeh acknowledged receipt of the said Summons and Complaint and indicated that copies of the said Summons and Complaint enclosed in plaintiffs' letter of June 29, 1976, had already been forwarded to the Embassy's American counsel. A copy of Mr. Moshaveghzadeh's letter is annexed to plaintiffs' Affidavit of Service, attached to Plaintiffs' Affidavit as Exhibit "C".

11. On June 29, 1976 counsel for plaintiffs enclosed in a letter sent to the Honorable Sadeq Ahmadi, Minister of Justice of defendant Empire, Tehran, Iran, via registered mail, return receipt requested, a copy of the Summons and Complaint subsequently personally served as described above. The said letter indicated that personal service would be effected upon (1) the Consulate General of Iran, (2) the Permanent Mission of Iran to the United Nations, and (3) Iran Air. The said letter to the Honorable Ahmadi is annexed to plaintiffs' Affidavit of Service, attached to Plaintiffs' Affidavit as Exhibit "C".

12. Counsel for plaintiffs has been advised by the process clerk for the United States Marshal's Office, Southern District of New York, that service upon the Permanent

AFFIDAVIT OF JAMES D. VEACH IN OPPOSITION TO DEFENDANTS'
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Mission of Iran to the United Nations, 622 Third Avenue, New York, New York 10019 [hereinafter Permanent Mission] is still outstanding. Plaintiffs have not received any U.S. Marshal's Service Process Receipt and Return relating to service upon the Permanent Mission. Plaintiffs have not abandoned and, to the best knowledge of counsel for plaintiffs, the United States Marshal for the Southern District has not abandoned his efforts to effect personal service upon the appropriate party at the Permanent Mission.

13. Iran Air is a corporation, created pursuant to the laws of defendant Empire, which has offices at 345 Park Avenue, New York, New York and does business within this jurisdiction. Iran Air is wholly owned and controlled by defendant Empire. Iran Air is subject to the regulation of defendant Dep't. Iran Air Application for a Foreign Air Carrier permit, attached to Plaintiffs' Affidavit as Exhibit "D".

The following members of the Iran Air Board of Directors are all either employees of or were formerly employed by defendant Empire:

<u>Member</u>	<u>Position</u>
a. Gen. Mohammad Khatami	Commander in Chief - Imperial Iranian Air Force
b. Houshang Arbabi	Deputy Minister of Roads and Civil Aviation Administration

AFFIDAVIT OF JAMES D. VEACH IN OPPOSITION TO DEFENDANTS'
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- | | | |
|----|---------------------------|--|
| c. | Gholom Hossein Jahanshahi | Formerly High Ranking
Governmental Official |
| d. | Amir Goudarznia | Formerly High Panking
Governmental Official |

Iran Air Exhibit IR-101, attached to Plaintiffs' Affidavit as Exhibit "D". Mr. Arbabai apparently holds positions with Iran Air and defendant Dep't.

All of Iran Air's stock is held by defendant Empire. Iran Air Exhibit IR-102, attached to Plaintiffs' Affidavit as Exhibit "D". Iran Air's loans are guaranteed by defendant Empire. Iran Air Exhibit IR-103, attached to Plaintiffs' Affidavit as Exhibit "D".

Iran Air owns a 50% interest in Maison de l'Iran, S.A., organized under French law to promote tourism to Iran and the sale of Iranian products abroad. The other 50% in Maison de l'Iran, S.A. is held by the National Iranian Oil Company. Iran Air Exhibit IR-104, attached to Plaintiffs' Affidavit as Exhibit "D".

Arts. 5 and 9 of the Proof of Incorporation for Iran Air provide that Iran Air is to be the exclusive air carrier for domestic and international air transportation and as such is exempt from taxation by defendant Empire. Iran Air Exhibit IR-108, attached to Plaintiffs' Affidavit as Exhibit "D".

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On April 9, 1974, the C.A.B. ordered and the President approved on May 3, 1974, the issuance of a permit of foreign transportation to Iran Air and is attached to Plaintiffs' Affidavit as Exhibit "E". The said permit was issued on May 3, 1974 and is attached to Plaintiffs' Affidavit as Exhibit "F".

14. It has been reported that Iran Air contributed to the cost of constructing and modifying the Terminal Building at the said airport. Plaintiffs' Affidavit, Exhibit "G".

15. Decedents Upton and Nimtz and plaintiff Caswell were all within the Mehrabad International Airport Terminal Building at the time of its collapse awaiting Iran Air flights out of Tehran, Iran. Copies of their tickets are attached to Plaintiffs' Affidavit as Exhibits "H", "I" and "J".

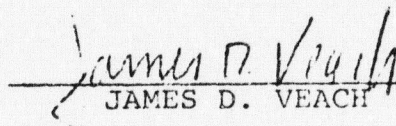
16. Defendants are clearly present within this jurisdiction as evidenced by the following list which sets forth some of the corporate and other agents of the defendants which do business and have offices within this jurisdiction:

- a. Bank Melli Iran
628 Madison Avenue
New York, New York 10022;

AFFIDAVIT OF JAMES D. VEACH IN OPPOSITION TO DEFENDANTS'
MOTION

- b. Bank Saderat of Iran
375 Park Avenue
New York, New York 10022;
- c. National Iranian Oil Company
Time-Life Building
1271 Avenue of the Americas
New York, New York 10020;
- d. Arya National Shipping Line U.S.A.
General Agents
Norton, Lily & Co., & Inc.
90 West Street
New York, New York 10006; and
- e. Iran Express Lines
Jan C. Uiterwyk Company, Inc.
90 West Street
New York, New York 10006.

The names and addresses of the above-listed agents are taken from the IMPERIAL GOVERNMENT OF IRAN, MINISTRY OF INFORMATION AND TOURISM, MINI GUIDE (2d ed. June, 1976), portions of which are attached to Plaintiffs' Affidavit as Exhibit "K". The said MINI-GUIDE was obtained from the Iran Information and Tourism Center, 10 West 49th Street, New York, New York 10020.


JAMES D. VEACH

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AFFIDAVIT OF JAMES D. VEACH IN OPPOSITION TO DEFENDANTS'
MOTION

Sworn to before me this

11th day of August, 1976

Wylene Y. Robinson
Notary Public

WYLENE Y. ROBINSON
Notary Public, State of New York
No. 31-4500780
Qualified in New York County
Term Expires March 30, 1977

EXHIBIT A, ANNEXED TO AFFIDAVIT OF JAMES D. VEACH.

U.S. MARSHALS SERVICE PROCESS RECEIPT and RETURN		INSTRUCTIONS: See "INSTRUCTIONS FOR SERVICE OF PROCESS BY THE U.S. MARSHAL" on the reverse of the last (No. 5) copy of this form. Please type or print legibly, insuring readability of all copies. Do not detach any copies.	
PLAINTIFF Margie L. Upton, et al.	COURT NUMBER 76 Civ 2914		
DEFENDANT The Department of Civil Aviation of Iran, et al.	TYPE OF WRIT(S)		
SERVE NAME OF INDIVIDUAL, COMPANY, CORPORATION, ETC., TO SERVE OR DESCRIPTION OF PROPERTY TO SEIZE OR CONDEMN The Consulate General of Iran			
ADDRESS (Street or RFD, Apartment No., City, State and ZIP Code) 630 Fifth Avenue, Room 900, New York, New York 10020			
(2)			
AT SEND NOTICE OF SERVICE COPY TO NAME AND ADDRESS BELOW:		Number of writs to be served with this form-235 1	
Kreindler & Kreindler, Esqs. 99 Park Avenue New York, New York 10016		Number parties to be served in this case 2	
Check for service on U.S.A.		1	
SPECIAL INSTRUCTIONS OR OTHER INFORMATION THAT WILL ASSIST IN EXPEDITING SERVICE:			
Serve upon: Ms. Khorvash Office of the Legal Counsel Consulate General of Iran 630 Fifth Avenue, Room 900 New York, New York 10020			
Signature of Attorney or other Originator requesting service on behalf of:		☒ PLAINTIFF	TELEPHONE NUMBER 212-687-8181
Milton G. Sincoff		☐ DEFENDANT	DATE June 30, 1976
SPACE BELOW FOR USE OF U.S. MARSHAL ONLY - DO NOT WRITE BELOW THIS LINE			
I acknowledge receipt for the total number of writs indicated (Sign only first USM 285 if more than one 285 is submitted)	Total Writs 3	District of Origin SD NY	District to Serve SD NY
Signature of Authorized USMS Deputy or Clerk		Date 6/30/76	
I hereby certify and return that I ☒ have personally served, ☐ have legal evidence of service, ☐ have executed as shown in "Remarks", the writ described on the individual, company, corporation, etc., at the address shown above or on the individual, company, corporation, etc., at the address inserted below.			
☐ I hereby certify and return that I am unable to locate the individual, company, corporation, etc., named above. (See remarks below)			
Name and title of individual served (if not shown above) Ms. Khorvash		☐ A person of suitable age and discretion then residing in the defendant's usual place of abode.	
Address (complete only if different than shown above)		Date of Service 7-8-76	Time 5:15 PM
Signature of U.S. Marshal or Deputy T. Kubitelle	Forwarding Fee 3.00	Service Fee 1.20	Total 4.20

REMARKS:

The office closed - left message

W-48-205

EXHIBIT B, ANNEXED TO AFFIDAVIT OF JAMES D. VEACH.

U.S. MARSHALS SERVICE
PROCESS RECEIPT and RETURNINSTRUCTIONS: See "INSTRUCTIONS FOR SERVICE OF
PROCESS BY THE U.S. MARSHAL" on the reverse of the last
(No. 5) copy of this form. Please type or print legibly, insuring
readability of all copies. Do not detach any copies.

PLAINTIFF Margie L. Upton, et al.	COURT NUMBER 76cv2914						
DEFENDANT The Department of Civil Aviation of Iran, et al.	TYPE OF WRIT(S) S & C						
NAME OF INDIVIDUAL, COMPANY, CORPORATION, ETC. TO SERVE OR DESCRIPTION OF PROPERTY TO SEIZE OR CONDEMN Iran National Airlines Corporation							
ADDRESS (Street or RFD, Apartment No., City, State and ZIP Code) 345 Park Avenue, New York, New York 10022							
AT							
SEND NOTICE OF SERVICE COPY TO NAME AND ADDRESS BELOW:							
Kreindler & Kreindler, Esqs. 99 Park Avenue New York, New York 10016	<table border="1"> <tr> <td>Number of writs to be served with this form-285</td> <td>1</td> </tr> <tr> <td>Number parties to be served in this case</td> <td>2</td> </tr> <tr> <td>Check for service on U.S.A.</td> <td></td> </tr> </table>	Number of writs to be served with this form-285	1	Number parties to be served in this case	2	Check for service on U.S.A.	
Number of writs to be served with this form-285	1						
Number parties to be served in this case	2						
Check for service on U.S.A.							

SPECIAL INSTRUCTIONS OR OTHER INFORMATION THAT WILL ASSIST IN EXPEDITING SERVICE:

Signature of Attorney or other Originator requesting service on behalf of: Milton G. Sincoff	☒ PLAINTIFF ☐ DEFENDANT	TELEPHONE NUMBER 212-687-8181	DATE June 30, 1976
SPACE BELOW FOR USE OF U.S. MARSHAL ONLY - DO NOT WRITE BELOW THIS LINE			
I acknowledge receipt for the total number of writs indicated (Sign only first USM 285 if more than one 285 is submitted)	Total Writs 3	District of Origin SD	District to Serve SD
Signature of Authorized USMS Deputy or Clerk J. D. Veach			Date 6/30/76
I hereby certify and return that I ☒ have personally served, ☒ have legal evidence of service, ☒ have executed as shown in "Remarks", the writ described on the individual, company, corporation, etc., at the address shown above or on the individual, company, corporation, etc., at the address inserted below.			
☐ I hereby certify and return that I am unable to locate the individual, company, corporation, etc., named above. (See remarks below)			
Name and title of individual served (if not shown above) John Doe		☐ A person of suitable age and discretion then residing in the defendant's usual place of abode.	
Address (complete only if different than shown above)		Date of Service 7/8/76	Time 11:15 am
Signature of U.S. Marshal or Deputy Richard D. Veach	Forwarding Fee	Service Fee 3.00	Mileage (including endeavors) 1.20
REMARKS: 7/8/76 Male about 5'-4" black hair. Says he is a Mgr. of office for Iran National Airlines Corp. However, I refused to accept same. D.V.		Total 4.20	

F-218-239

EXHIBIT C, ANNEXED TO AFFIDAVIT OF JAMES D. VEACH.

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT NEW YORK

-----x

MARGIE L. UPTON, Individually and
as Administratrix of the Estate of
LARRY L. UPTON, deceased, ET AL.,

Plaintiffs,

-against-

THE DEPARTMENT OF CIVIL AVIATION
OF THE EMPIRE OF IRAN and THE
EMPIRE OF IRAN,

Defendants.

-----x

76 Civ. 2914 (CMM)

AFFIDAVIT OF SERVICE
UPON DEFENDANTS

STATE OF NEW YORK)
)ss.:
COUNTY OF NEW YORK)

WYLENE Y. CARTER, being duly sworn, deposes and says:

1. I am Secretary to Milton G. Sincoff, member
of the firm of KREINDLER & KREINDLER, attorneys for the plain-
tiffs herein.

2. On June 30, 1976, the Summons and Complaint in
this action was filed with the Clerk of the United States
District Court for the Eastern District of New York. Copies
were delivered to the United States Marshall for that Court

EXHIBIT C, ANNEXED TO AFFIDAVIT OF JAMES D. VEACH

for service upon the following agents of the Department of Civil Aviation of the Empire of Iran and the Empire of Iran [hereinafter DEP'T OF CIVIL AVIATION & EMPIRE OF IRAN]:

- a. Iran National Airlines Corporation
345 Park Avenue
New York, New York 10022
- b. The Consulate General of Iran
630 Fifth Avenue, Room 900
New York, New York 10020
- c. The Permanent Mission of Iran
to the United Nations
622 Third Avenue, 34th Floor
New York, New York 10019

3. On June 30, 1976, I mailed copies of the said Summons and Complaint in secured postage-paid envelopes together with letters addressed to the following representatives of defendants DEP'T OF CIVIL AVIATION & EMPIRE OF IRAN:

- a. Mr. A. Moshaveghzadeh
Office of the Legal Counsel
The Imperial Embassy of Iran
3005 Massachusetts Avenue, N.W.
Washington, D.C. 20008
- b. The Honorable Sadeq Ahmadi
Minister of Justice
The Empire of Iran
Tehran, Iran

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EXHIBIT C, ANNEXED TO AFFIDAVIT OF JAMES D. VEACH

Attached hereto are copies of those letters, the registered mail return receipt from the Embassy of Iran and a letter from Legal Counsel for the Embassy of Iran acknowledging receipt of copies of said Summons and Complaint.

Wylene Y. Carter
Wylene Y. Carter

Sworn to before me this
20th day of July , 1976

Nancy Ann Gammino
Public Notary

NANCY ANN GAMMINO
Notary Public, State of New York
No. 41-650005
Qualified in Queens County
Certificate filed in New York County
Commission Expires March 22, 1979

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EXHIBIT C, ANNEXED TO AFFIDAVIT OF JAMES D. VEACH.

June 29, 1976

Mr. Moshaveghzadeh
Office of the Legal Counsel
The Imperial Embassy of Iran
3005 Massachusetts Avenue, N.W.
Washington, D.C. 20008

Re: Margie L. Upton v. The Department
of Civil Aviation of the Empire
of Iran, et. al.

Dear Sir:

Enclosed is a copy of a Summons and Complaint which has been filed in the United States District Court for the Southern District of New York.

The filing of the within Summons and Complaint commenced an action against the Department of Civil Aviation of the Empire of Iran and The Empire of Iran for damages arising from the deaths of Larry L. Upton and Michael John Nimitz, and the serious injury of Alfred E. Caswell, as the result of the collapse of the roof of the Main Hall of the Terminal Building of the Mehrehab Airport, Tehran, Iran on December 5, 1974. My law firm represents Mr. Caswell, an American citizen, and the Estates of Larry L. Upton and Michael John Nimitz, both of whom were American citizens at the time of their deaths.

Copies of the within Summons and Complaint have been delivered to the United States Marshal for the Southern District of New York who will effect service by personally serving the following agencies of the Empire of Iran and the Department of Civil Aviation of the Empire of Iran:

EXHIBIT C, ANNEXED TO AFFIDAVIT OF JAMES D. VEACH

1. Iran National Airlines Corporation
345 Park Avenue
New York, New York 10022
2. The Consulate-General of Iran
630 Fifth Avenue, Room 900
New York, New York 10020
3. The Permanent Mission of Iran
to the United Nations
622 Third Avenue, 34th Floor
New York, New York 10019

In addition, a copy of the within Summons and Complaint has been sent via registered mail, return receipt requested, to the Honorable Sadeq Ahmadi, Minister of Justice, The Empire of Iran, Tehran, Iran.

We respectfully suggest you forward the enclosed to your American counsel.

Very truly yours,

KREINDLER & KREINDLER

By: Milton G. Sincoff

MGS/ml
Enclosures
Sent via Registered Mail -
Return Receipt Requested

EXHIBIT C, ANNEXED TO AFFIDAVIT OF JAMES D. VEACH

June 29, 1976

Honorable Sadeq Ahmadi
Minister of Justice
The Empire of Iran
Tehran, Iran

Re: Margie L. Upton v. The Department
of Civil Aviation of the Empire
of Iran, et. al

Honorable Sir:

Enclosed is a copy of a Summons and Complaint which has been filed in the United States District Court for the Southern District of New York.

The filing of the within Summons and Complaint commenced an action against the Department of Civil Aviation of the Empire of Iran and The Empire of Iran for damages arising from the deaths of Larry L. Upton and Michael John Nintz, and the serious injury of Alfred E. Caswell, as the result of the collapse of the roof of the Main Hall of the Terminal Building of the Mehrebad Airport, Tehran, Iran on December 5, 1974. My law firm represents Mr. Caswell, an American citizen, and the Estates of Larry L. Upton and Michael John Nintz, both of whom were American citizens at the time of their deaths.

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1. Iran National Airlines Corporation
345 Park Avenue
New York, New York 10022

EXHIBIT C, ANNEXED TO AFFIDAVIT OF JAMES D. VEACH

2. The Consulate General of Iran
630 Fifth Avenue, Room 900
New York, New York 10020
3. The Permanent Mission of Iran
to the United Nations
622 Third Avenue, 34th Floor
New York, New York 10019

In addition, a copy of the within Summons and Complaint has been sent via registered mail, return receipt requested, to Mr. Moshaveghzadeh, Office of the Legal Counsel, The Imperial Embassy of Iran, 3005 Massachusetts Avenue, N.W., Washington, D.C. 20008.

We respectfully suggest you forward the enclosed to your American counsel.

Very truly yours,

KREINDLER & KREINDLER

By: Milton G. Sincoff

MGS/ml
Enclosures
Sent via Registered Mail -
Return Receipt Requested

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EXHIBIT C, ANNEXED TO AFFIDAVIT OF JAMES D. VEACH

PS Form 3811, Jan. 1978

● **SENDER:** Complete items 1, 2, and 3.
Add your address in the "RETURN TO" space on reverse.

1. The following service is requested (check one).
☐ Show to whom and date delivered 15¢
☒ Show to whom, date, & address of delivery 35¢
☐ **RESTRICTED DELIVERY.**
 Show to whom and date delivered 65¢
☐ **RESTRICTED DELIVERY.**
 Show to whom, date, and address of delivery 85¢

2. **ARTICLE ADDRESSED TO:** *Mr. Moshaveghzadeh*
Office of the Legal Counsel
THE Imperial Embassy of Iran
3005 Massachusetts Ave NW
Washington DC 20008

3. **ARTICLE DESCRIPTION:**
 REGISTERED NO. **368716** CERTIFIED NO. INSURED NO.

(Always obtain signature of addressee or agent)
 I have received the article described above.
 SIGNATURE ☐ Addressee ☐ Authorized agent

4. **DATE OF DELIVERY:** *Jan 24 1978* **POSTMARK**

5. **ADDRESS (Complete and legible)**

6. **UNABLE TO DELIVER BECAUSE:** **CLERK'S INITIALS**

★ GPO: 1978-0-582-047

RETURN RECEIPT, REGISTERED, INSURED AND CERTIFIED MAIL

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EXHIBIT C, ANNEXED TO AFFIDAVIT OF JAMES D. VEACH



IMPERIAL EMBASSY OF IRAN
WASHINGTON, D. C.

July 8, 1976

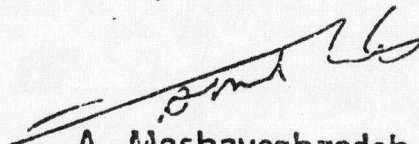
Milton G. Sincoff, Esquire
Kreindler & Kreindler
99 Park Avenue
New York, New York 10016

Re: Margie L. Upton v. The Department of Civil Aviation
of the Empire of Iran, et al.

Dear Mr. Sincoff:

I acknowledge receipt of the Summons and Complaint in the
above matter, transmitted under cover of your letter of June 29,
1976.

As you requested, these documents have already been
forwarded to the Embassy's American counsel.


A. Moshaveghzadeh,
Counselor

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EXHIBIT D, ANNEXED TO AFFIDAVIT OF JAMES D. VEACH

BEFORE THE
CIVIL AERONAUTICS BOARD
WASHINGTON, D. C.

RECEIVED

May 23 3:09P.M. '73

Civil Aeronautics
Board

Application of

IRAN NATIONAL AIRLINES CORPORATION

Docket 25565

for a foreign air carrier permit

APPLICATION FOR FOREIGN AIR CARRIER PERMIT

Please direct communications to:

Iran National Airlines Corporation
345 Park Avenue
New York, New York

and

Robert M. Lichtman
Lichtman, Abeles & Anker
1730 M Street, N.W.
Washington, D. C. 20036

Attorney for Applicant

EXHIBIT D, ANNEXED TO AFFIDAVIT OF JAMES D. VEACH

BEFORE THE

CIVIL AERONAUTICS BOARD

WASHINGTON, D. C.

Application of

IRAN NATIONAL AIRLINES CORPORATION

Docket _____

for a foreign air carrier permit
-----APPLICATION FOR FOREIGN AIR CARRIER PERMIT

Iran National Airlines Corporation (IRAN AIR) hereby applies for a foreign air carrier permit, pursuant to Section 402 of the Federal Aviation Act of 1958, as amended, and in support whereof states as follows:

1. The full name and address of the applicant is Iran National Airlines Corporation, IRAN AIR Headquarters Building, Mehrabad Airport, Tehran, Iran. Applicant maintains an office in the United States at 345 Park Avenue, New York, New York.

2. Applicant is an Iranian corporation organized pursuant to the Law Concerning the Formation of the Iran National Airlines Corporation and Civil Aviation. No direct or indirect beneficial or non-beneficial interest in applicant is held by nationals of any government other than the Government of Iran. Applicant is wholly owned and controlled by the Government of Iran.

3. The name and official address of the competent air authority of applicant's country of citizenship having regulatory jurisdiction over the applicant is: Department General of Civil Aviation, Mehrabad Airport, Tehran, Iran.

EXHIBIT D, ANNEXED TO AFFIDAVIT OF JAMES D. VEACH

4. Applicant has been authorized by the Government of Iran to provide the foreign air transportation covered by this application.

5. Applicant hereby applies for a foreign air carrier permit authorizing it to engage in foreign air transportation as follows:

A. Foreign air transportation of persons, property and mail in scheduled and non-scheduled service

(1) between a point or points in Iran via intermediate points^{1/} in Lebanon, Turkey, Israel, Egypt, Italy, Switzerland, Austria, the Federal Republic of Germany, France, Morocco, Portugal and the United Kingdom, and the co-terminal points New York, New York and Detroit, Michigan;^{2/} and

(2) between a point or points in Iran via intermediate points^{1/} in Lebanon, Turkey, Israel, Egypt, Italy, Switzerland, Austria, the Federal Republic of Germany, France, Morocco, Portugal and the United Kingdom, and the co-terminal points Detroit, Michigan and Los Angeles, California.^{3/}

B. Off-route charter flights of persons and property in foreign air transportation in accordance with Part 212 of the Economic Regulations of the Civil Aeronautics Board.

6. An airline designated by the Government of Iran is entitled, in accordance with the bilateral air transport agreement currently in effect between Iran and the United States, to operate air service over

^{1/} Only one point to be served in countries other than the Federal Republic of Germany, Switzerland and Turkey.

^{2/} Detroit is not to be served on any service which serves New York. Detroit shall be deleted as a co-terminal point on this route upon the effectiveness of the route authority described in subparagraph (2).

^{3/} The route authority described in subparagraph (2) shall not become effective prior to April 1, 1975.

EXHIBIT D, ANNEXED TO AFFIDAVIT OF JAMES D. VEACH

the route described in paragraph A(1) of the preceding paragraph and, pursuant to an intergover Note, said airline will be entitled to operate air services over the route described in subparagraph A(2) of the preceding paragraph commencing in the Spring of 1975. IRAN AIR has been designated by the Government of Iran to perform air services over these routes.

7. Applicant will submit prior to the hearing a map of the requested routes in accordance with §211.5(d) of the Board's Economic Regulations.

WHEREFORE, applicant respectfully requests that it be issued a foreign air carrier permit in the form described herein, and such other and further relief as the Board may deem appropriate.

Respectfully submitted,

IRAN NATIONAL AIRLINES CORPORATION

By /s/ Robert M. Lichtman
Robert M. Lichtman
Lichtman, Abeles & Anker, P.C.
1730 M Street, N.W. - Suite 605
Washington, D. C. 20036

Attorney for Applicant

EXHIBIT D, ANNEXED TO AFFIDAVIT OF JAMES D. VEACH

VERIFICATION

Robert M. Lichtman, being duly sworn, deposes and says that he is an attorney at law for applicant IRAN NATIONAL AIRLINES CORPORATION and is authorized to sign the foregoing application; and that to the best of his knowledge every statement contained in the application is true.

/s/ Robert M. Lichtman
Robert M. Lichtman

Subscribed and sworn to before me this 9th day of April, 1973.

/s/ Mary L. Zajac
Notary Public, District of Columbia

My Commission Expires Dec. 14, 1974

EXHIBIT D, ANNEXED TO AFFIDAVIT OF JAMES D. VEACH

Cross-Index of Bureau Information Requests
and Exhibits

<u>Bureau Request No.</u>	<u>Exhibit No.</u>
1.a	IR-101
1.b	IR-102
1.c	IR-103
1.d	IR-105
1.e	IR-104
2	IR-106
3	IR-108
4	IR-109,118
5	IR-110,112
6	IR-102
7	IR-115
8	IR-118
9	IR-200
9.a	IR-200,201,202
9.b	IR-204
9.c	IR-203
9.d	IR-200,201,202
9.e	IR-201,202;207
9.f	IR-201
10	IR-117
11	IR-116
12	IR-100,203
13	IR-118
14	IR-306

EXHIBIT D, ANNEXED TO AFFIDAVIT OF JAMES D. VEACH

CAB Docket 25565

Exhibit IR-100
Page 1 of 1BRIEF HISTORY OF APPLICANT

Iran National Airlines Corporation (Iran Air) was established in 1962, pursuant to a statute enacted by the Iranian Parliament which grants it "exclusive traffic rights of operating heavy aircraft in domestic and international air transportation of passengers and cargo." The establishment law makes Iran Air "the only Iranian airline authorized to use the rights covered by contracts, agreements and concessions concluded between the Imperial Iranian Government and other countries in connection with introduction of flight services."

At the time of Iran Air's formation, the Iranian Government, which is Iran Air's sole owner, acquired the interests of two privately owned predecessor airlines. Those airlines, one an IATA and the other a non-IATA carrier, had provided domestic and international services. Iran Air has been a member of IATA since its inception.

EXHIBIT D, ANNEXED TO AFFIDAVIT OF JAMES D. VEACH

During the decade it has been in operation, Iran Air has experienced substantial growth. In its 1970/71 fiscal year, for example, Iran Air transported 731,000 passengers and earned over \$46 million in transport revenues, compared to 165,800 passengers and \$3.6 million in transport revenues in 1962/63. Iran Air now operates domestic and regional air services in the Persian Gulf area; international routes between Iran and various European points as far as London; and international routes to the East as far as Bombay, India.

CIVIL AERONAUTICS BOARDDate Sep 24 1973 Dkt.#25565 Ex.# IR-100

Witness _____

(Complainant's
(Defendant's
(Government's
(Respondent's
(Protestant's
(Applicant's
(Intervener's

Reporter:

/s/ C.Muieller
Ace Federal
Reporters, Inc.

OFFICERS AND DIRECTORS OF IRAN AIR

Members of the Board of Directors^{*/}

GEN. MOHAMMAD KHATAMI

Citizenship: Iranian

Commander in Chief -Imperial Iranian Air Force

Chairman of Iran Air Board since February 1962

HOUSHANG ARBABI

Citizenship: Iranian

Deputy Minister of Roads and Civil Aviation Administrator

Member of the Iran Air Board since February 1962

GHOLOM HOSSEIN JAHANSHAHI

Citizenship: Iranian

Formerly high ranking government official

Member of Iran Air Board since 1971

AMIR GOUDARZNIA

Citizenship: Iranian

Formerly high ranking government official

Member of Iran Air Board since 1967

CIVIL AERONAUTICS BOARD

Date Sep. 24 1973 Dkt.#25565 Ex.# IR-101

Witness _____

(Complainant's
(Defendant's
(Government's
(Respondent's
(Protestant's
(Applicant's
(Intervener's

Reporter:

/s/ C.Muieller
Ace Federal
Reporters, Inc.

^{*/} In addition to the Board members listed, there are two alternate members, Engineer Safi-Asfia and Mr. Ali Ghavan, who serve only in the absence of Board members. Both are Iranian citizens.

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EXHIBIT D, ANNEXED TO AFFIDAVIT OF JAMES D. VEACH

CAB Docket 25565

Exhibit IR-101
Page 2 of 7

Managing Director and Member of the Board of Directors

ALI MOHAMMAD KHADEMI (Lt. Gen., ILAF, Ret.)

Home address*/ Emam Zadeh Ghassem, Shemiran, Tehran

Citizenship: Iranian

Birth date: 1913

Received the Military College Certificate (1933) and passed the
Military Academy Courses (1936)

Completed Iranian Air Force Flying School and Flying Instructor
Course and received Pilot Flying License and Flying
Instructor License (1938-41)

Completed Advance Flying School and School of Air Navigation in
England (1948-49)

Served as First Officer and later Captain for Iranian Airways
Company, an airline with international routes (1946-49).
Was the first Iranian to obtain the Airline Transport
Pilot License

*/ Business address for all Iran Air officers is Iran Air
Headquarters Building, Mehrabad Airport, Tehran.

EXHIBIT D, ANNEXED TO AFFIDAVIT OF JAMES D. VEACH

Completed General Staff College, Iran (1953) and Command and Staff College, USAF Air University

Served in numerous capacities with the Imperial Iranian Air Force, including a four-year term (1958-62) as Chief of the Iranian Air Force Commander's Staff

Elected as Managing Director of Iran Air in 1962 and has served as Chief Executive of Iran Air since that date

Was President of IATA for 1970-71 and is now a member of the IATA Executive Committee.

Deputy Managing Director

GEN. ABBAS GHANDAHARI

Citizenship: Iranian

Date of Birth: 1914

Received degree from Iranian Military Academy

Served, among other high ranking positions, as Vahdati Air Force Base Commander, Army Aviation Committee

Joined Iran Air as Deputy Managing Director in early 1972

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EXHIBIT D, ANNEXED TO AFFIDAVIT OF JAMES D. VEACH

CAB Docket 25565

Exhibit IR-101
Page 3 of 7

Deputy Managing Director - Corporate Planning

HOOSHANG TAJADOD

Citizenship: Iranian

Date of Birth: 1923

Attended law college, University of Tehran

Employed by Iranian Airways (a predecessor airline of Iran Air) in 1947. Continued in various managerial positions with Iranian Airways and became Vice President prior to its merger with Iran Air.

Joined Iran Air at its inception in 1962 and has served in a variety of responsible managerial capacities. As Deputy Managing Director - Corporate Planning, Mr. Tajadod, among other things, directs the preparation and review of long-term corporate plans for the future operations of Iran Air and engages in commercial negotiations on the carrier's behalf.

Deputy Managing Director - Flight Operations

CAPTAIN L. C. LINDSEY

Citizenship: United States

Date of Birth: 1912

Holds degrees in business administration from the University of Washington and as a U.S. Marine Corps Naval Aviator.

EXHIBIT D, ANNEXED TO AFFIDAVIT OF JAMES D. VEACH

Employed by Pan American World Airways in 1936 as a copilot. Had various pilot and management assignments within Pan American and under Technical Assistance Program Agreements.

Assigned to Iran Air in 1964 under the Pan American/Iran Air Technical Assistance Agreement. Is responsible for direction of the flight operations of Iran Air, including all crew members, as well as all flight control and related services.

Deputy Managing Director - Engineering and Maintenance

R. A. ROBERTS

Citizenship: United States

Date of Birth: 1918

Holds bachelor degree in medical and aeronautical engineering.

Employed for 32 years with Pan American World Airways as flight engineer, aircraft project engineer, and executive for various maintenance and modification services.

135a
EXHIBIT D, ANNEXED TO AFFIDAVIT OF JAMES D. VEACH

CAB Docket 25565

Exhibit IR-101
Page 4 of 7

Assigned to Iran Air in 1965 under the Pan American/Iran Air Technical Assistance Agreement. Is responsible for the preparation and implementation of plans and procedures for the maintenance, inspection and scheduling of aircraft and the maintenance of ground equipment.

Deputy Managing Director - Finance

M. R. ZOLNASR

Citizenship: Iranian

Date of Birth: 1923

Holds B.A. and M.A. degrees from the University of Iran

Served in a number of positions with the Iranian Ministry of Finance before joining Iran Air.

Joined Iran Air in 1964. Is responsible for the direction of the financial affairs of the carrier (including accounting and profit), developing financial policy proposals, plans and controls procedures to insure the safeguarding and most profitable use of financial resources.

Deputy Managing Director - Services of Supply

ABRAHIM FIUZI (Maj. Gen. IIAF, Ret.)

Citizenship: Iranian

Date of Birth: 1917

EXHIBIT D, ANNEXED TO AFFIDAVIT OF JAMES D. VEACH

Completed advanced course of transportation, U.S. Army and U.S.A.F Comat Staff School; also completed Imperial Iranian War College.

Served with Imperial Iranian Air Force in various positions for 30 years.

Joined Iran Air in 1965. Is responsible for the preparation and implementation of plans and procedures for the procurement of all supplies for the airline.

Deputy Managing Director - Medical Services

DR. ENAYAT MOAYED

Citizenship: Iranian

Date of Birth: 1921

Holds M.D. degree, master's degree in public health and senior medical examiner from the University of Tehran. Has also completed advanced courses at foreign universities

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CAB Docket 25565

Exhibit IR-101,
Page 5 of 7

Joined Iran Air in 1962. Is responsible for directing the provision of medical services for airline employees and passengers, medically-oriented training for flight personnel, and research and development in the area of aviation medicine.

Is a member of the IATA Medical Committee.

Director General, Airport Services

BIJAN AMERI

Citizenship: Iranian

Date of Birth: 1935

Holds degree in aeronautical engineering from the University of Tehran. Has completed IATA and airline courses in the area of airport services.

Joined Iran Air in 1963. Initially served in the engineering planning department, then later became deputy ground operations manager. In his present position, he is responsible for the development of plans and procedures and for implementing the airline's airport services, including passenger and cargo handling; catering; and aircraft handling on the ramp throughout Iran Air's system.

EXHIBIT D, ANNEXED TO AFFIDAVIT OF JAMES D. VEACH

Director General, General Services

ANOUSHIRAVAN SADR

Citizenship: Iranian

Date of Birth: 1925

Holds B.A. in political science from the University of Tehran.
Also completed special courses in the area of management and central and local government.

Joined Iran Air in 1970. Is responsible for the provision of central services covering, among other things, civil engineering, property administration, ground transport in Tehran, headquarters office services and general stores.

Director General, Legal

HAMID RAZAVI

Citizenship: Iranian

Date of Birth: 1918

Holds LL.B. degree from University of Tehran.

Employed by Iran Air in 1963. Is responsible for the direction of the legal affairs of the corporation, both within and outside Iran, and for providing legal advice to all levels of management and to the Board of Directors when requested.

Member of the IATA Legal Committee.

EXHIBIT D, ANNEXED TO AFFIDAVIT OF JAMES D. VEACH

CAB Docket 25565

Exhibit IR-101
Page 6 or 7Director General, Management Services

MINOO AHMAD-SARTEP (MISS)

Citizenship: Iranian

Date of Birth: 1939

Holds B.S. degree from Beaver College (Pennsylvania, U.S.A.), and Master's Degree in Business Management from University of Tehran. Also completed general management and executive development programs.

Joined Iran Air in 1968. Is responsible for assisting the heads of all divisions and departments in improving working methods through the application of modern management techniques; also directs the development of management information and control systems and the airline's approach to the use of data processing equipment.

Director General, Manpower and Training

DR. MEHDI VAZIRNIA

Citizenship: Iranian

Date of Birth: 1936

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EXHIBIT D, ANNEXED TO AFFIDAVIT OF JAMES D. VEACH

Holds M.S. degree from University of Tehran and advanced degrees, including his doctorate and a diploma in industrial relations, from universities in France, the U.S., and Canada. Has served in various academic and government positions.

Joined Iran Air in 1972. Is responsible for planning, training and improvement of employee relationships.

Director General, Personnel

BRIG. GEN. T. GOUDARZI

Citizenship: Iranian

Date of Birth: 1920

Holds B.A. and M.A. degrees from Iranian Military Staff College and Ph.D. degree from the University of Tehran.

Served with Imperial Iranian Air Force specializing in personnel management positions.

Joined Iran Air in 1970. Responsible for the development of plans, procedures and regulations for providing services to the airline in the fields of personnel and recruitment.

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Page 7 of 7

Director General, Public Relations

DR. ALI-ASGHAR AZIZI

Citizenship: Iranian

Date of Birth: 1914

Holds Ph.D. degree in science from Berlin University and B.S. degree in law and journalism from the University of Vienna.

Joined Iran Air in 1965. Responsible for plans and programs for the development of Iran Air's corporate image, to support the achievement of corporate objectives and plans, and to promote good relations between Iran Air and the general public, the government and other institutions.

Director General, Sales and Field Operations

COL. SOHRAB FATEH

Citizenship: Iranian

Date of Birth: 1927

Holds B.S. - Arts and Sciences degree from University of Tehran, and has completed advanced courses in the area of air transportation.

Served with the Imperial Iranian Air Force in various capacities.

Joined Iran Air in 1962 at its inception. Was initially Secretary of Board of Directors, later became General Sales Manager, and was also Deputy Commercial Director. In his present position, he is responsible for developing policy proposals and directing the development of plans and procedures for the airline's worldwide sales and reservations organization. Also directs the management of all Iran Air's activities in districts outside of Tehran.

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Exhibit IR-102
Page 1 of 1

OWNERSHIP OF APPLICANT'S CAPITAL
STOCK

All of Iran Air's capital stock, consisting of 4,000 non-transferable shares, par value, 1,000,000 rials each, is owned and held by the Government of Iran. (Note: At current rates of exchange, 67.75 rials = \$1.00).

There are no pledges of Iran Air's capital stock, and no proxies with respect to such stock.

CIVIL AERONAUTICS BOARD
Date Sep 24 1973 Dkt.# 25565 Ex.# IR-102

Witness _____

(Complainant's
(Defendant's
(Government's
(Respondent's
(Protestant's
(Applicant's
(Intervener's _____

Reporter:

/s/ C. Muieller
Ace Federal
Reporters, Inc.

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EXHIBIT D, ANNEXED TO AFFIDAVIT OF JAMES D. VEACH

CAB Docket 25565

Exhibit IR-103
Page 1 of 1

NON-CAPITAL SECURITIES AND DEBT OBLIGATIONS

Iran Air has no bonds, debentures or other non-capital securities except for the promissory notes which accompany the loan agreements listed below. These loans, with the Export-Import Bank, First National City Bank, Chase Manhattan Bank and Bankers Trust Company, were obtained in connection with the purchase of aircraft and related spares by Iran Air from U.S. manufacturers. The loans are guaranteed by an agency of the Iranian Government, and there are no liens or mortgages placed upon Iran Air's aircraft. A separate loan from the U.S. Agency for International Development was obtained in connection with Iran Air's early training program.

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EXHIBIT D, ANNEXED TO AFFIDAVIT OF JAMES D. VEACH

The loans outstanding as of September 1, 1973 are as follows:

<u>Loan Agreement</u>	<u>Amount</u>	<u>Balance as of 9/73</u>
2246 Export-Import	\$9,760,000	\$ 697,143
2447 Export-Import	8,800,000	1,885,713
2965 First Nat. City Bank)	8,997,200	--
2671 Export-Import)	8,997,200	8,997,200
2885 Chase Manhattan)	7,420,000	4,240,000
2885 Export-Import)	7,420,000	7,420,000
4167 Bankers Trust)	7,840,000	7,840,000
4167 Export-Import)	7,840,000	7,840,000
265-H-022 A.I.D.	1,500,00	1,031,808

None of the foregoing creditors has any right to participate in the selection of officers or otherwise influence corporate policy.

CIVIL AERONAUTICS BOARD
Date Sep 24, 1973 DKT.#25565 Ex.# IR-103

Witness _____

(Complainant's	Reporter:
(Defendant's	/s/ C. Muieller
(Government's	Ace Federal
(Respondent's	Reporters, Inc.
(Protestant's	
(Applicant's	
(Intervener's	

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CAB Docket

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Page 1 of 1

APPLICANT'S INTEREST IN OTHER ENTITIES

Iran Hotels Corporation. Iran Air owns a 50 per cent interest in this corporation which has recently been formed under Iranian law to own and manage hotels in Iran.

Miason d L'Iran S.A. Iran Air owns a 50 per cent interest in this corporation organized under French law to promote tourism to Iran and sales of Iranian products abroad. The other 50 per cent interest is owned by the National Iranian Oil Company.

Iran Air holds nominal share interests in S.I.T.A. and International Aeradio Limited, both of which provide communications services for member airlines.

Except as stated above, the applicant holds no shares of stock or other interests in persons other than itself.

CIVIL AERONAUTICS BOARD
Date Sep 24 1973 Dkt.#25565 Ex.# IR-104

Witness _____

(Complainant's
(Defendant's
(Government's
(Respondent's
(Protestant's
(Applicant's
(Intervener's _____

Reporter:

/s/ C. Muieller
Ace Federal
Reporters, Inc.

CAB DOCKET 25565

Exhibit IR-108
Page 1 of 29

PROOF OF INCORPORATION

IRAN NATIONAL AIRLINES CORP.

The Imperial Decree directing implementation of establishment law of Iran National Airlines Corporation and regulations covering civil aviation operation and the said Act, as approved by the Senate and the House of Representatives is notified hereunder:

By the Grace of the Almighty; God

We,

Mohammad Reza Pahlavi Aryamehr

Shahinshah of Iran,

(place of Royal Signature)

ordain as follows in accordance with the Article twenty seven of the Supplement to the Constitutional Law:

Article 1 - The Establishment Law of Iran National Airlines Corporation and regulations covering civil aviation operations, as approved by the Senate and the House of Representatives, annexed to this Royal Decree be implemented.

EXHIBIT D, ANNEXED TO AFFIDAVIT OF JAMES D. VEACH

PROOF OF INCORPORATION

Article 1 - A shareholding company is formed and established under the title of Iran National Airlines Corporation for domestic and international air transportation of passengers, cargo and mail, as well as for handling all operations connected with commercial aviation.

EXHIBIT D, ANNEXED TO AFFIDAVIT OF JAMES D. VEACH

PROOF OF INCORPORATION

Article 3 - The stocks of Iran National Airlines Corporation, are non-endorseable registered shares and are owned by the Government.

NOTE - The Department General of Civil Aviation is required to reimburse the funds deposited by individuals and organizations for purchase of Iran National Airlines stocks. Reimbursement will be made out of relevant account and the applicable interest for the period as of the date of deposit through the date of reimbursement shall be paid at the rate of 6% out of revenues of Iran National Airlines Corps.

EXHIBIT D, ANNEXED TO AFFIDAVIT OF JAMES D. VEACH

PROOF OF INCORPORATION

Article 5 - Effective as of the establishment date, Iran National Airlines Corporation is granted the exclusive traffic rights to operating heavy aircraft in domestic and international air transportation of passengers and cargo. Iran National Airlines Corporation is recognized as the only Iranian airline authorized to use the rights covered by contracts, agreements and concessions concluded between the Imperial Iranian Government and other countries in connection with introduction of flight services.

NOTE 1 - "Heavy Aircraft" mentioned in this article constitute all types of aircraft which, together with equipment, fuel oil, crew, passengers and cargo, weigh over eleven thousand eight hundred and eighty five kilograms.

EXHIBIT D, ANNEXED TO AFFIDAVIT OF JAMES D. VEACH

CAB Docket 25565

Exhibit IR-108
Page 4 of 29PROOF OF INCORPORATION

Note 2: Excluding Iran National Airlines Corporation, all other Iranian aviation concerns presently engaged in regular flight operations as well as those Iranian operators who may obtain in future required permits or certificates, as provided by law, to engage in air transportation of passengers, cargo or any other commercial flights only with aircraft weighing eleven thousand eight hundred eighty five kilograms or less.

Note 3: Aviation traffic rights and/or air operation certificates for regular passenger and cargo air transportation may be issued to organizations mentioned in Note 2 above, and when Iran National Airlines Corporation fails to introduce the requested regular flight service within 3 months from the date of DGCA written notification, or when such regular flight services are suspended for a period exceeding three months after introduction.

EXHIBIT D, ANNEXED TO AFFIDAVIT OF JAMES D. VEACH

CAB Docket 25565

Exhibit IR-108
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PROOF OF INCORPORATION

Article 7 - Effective ratification date of this Law, Iran National Airlines Corporation shall have the exclusive right to represent foreign airlines and aviation concerns in the capacity of general agent, as well as to perform all aircraft handling services.

NOTE 1: Subject airline is authorized either to undertake direct administration of the general agency for foreign airlines and aviation concerns or to transfer said function to competent institutions and/or individuals, on its own responsibility while reserving supervisory powers.

NOTE 2: The provisions set forth in this article do not apply to the general agencies already in operation prior to ratification date of this Law and may continue their activities in line with relevant procedures.

EXHIBIT D, ANNEXED TO AFFIDAVIT OF JAMES D. VEACH

PROOF OF INCORPORATION

Article 8 - Iran National Airlines Corporation enjoys financial and organizational independence. It is administered in accordance with commercial principles, and is not subject to General Accounting Code and/or business, employment or financial laws and regulations governing state or state-affiliated organizations. It shall be governed by the constitution and policies annotated in Note 1, hereunder, unless otherwise stated by law with specific reference to Iran National Airlines Corporation.

NOTE 1: The government is required to draw the constitution and policies noted in this article within 3 months after ratification date of this law, and to submit same to the joint Roads and Financial Committees of the House of Representatives. Current regulations will remain in force until the aforesaid constitution and policies are approved.

EXHIBIT D, ANNEXED TO AFFIDAVIT OF JAMES D. VEACH

CAB Docket 25565

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PROOF OF INCORPORATION

NOTE 2: Iran National Airlines Corporation is authorized to recruit and use the services of expatriate experts and advisors in performing the relevant functions, provided it obtains the necessary work permits.

Preference shall be given, if available, to equally qualified Iranian experts and advisors.

Article 9 - Iran National Airlines Corporation and the organizations mentioned in Note 2, Article 5 of this Law shall be exempted from all income tax, all other taxes, duties and registration fees pertinent to aircraft, aircraft technical equipment and relevant transportation facilities.

Article 10: Iran National Airlines Corporation and the organizations covered by Note 2, Article 5 of this Law shall be exempted from customs duties and charges (excluding portorage and storage charges), as well as commercial tax applicable to items mentioned in Articles 11 and 12 of this Law.

EXHIBIT D, ANNEXED TO AFFIDAVIT OF JAMES D. VEACH

PROOF OF INCORPORATION

Article 12 - National Iranian Oil Company shall charge, effective as of 21st March 1966, at the same domestic sale rates of 26 Azar 1336 (17th Dec 1957), all types of fuel and methanol required by aircraft of Iran National Airlines Corporation. In the event the rates are unknown or new productions are introduced, it shall charge, free of all extra charges, at rates proportionate to rates prevalent prior to subject date, within provisions of Article 10 of this Law.

NOTE 1: National Iranian Oil Company shall waive collection of the previous difference in charges of fuel already used by Iran National Airlines Corporation and Mehrabad Airport Service, to the advantage of Iran National Airlines Corp.

NOTE 2 - Organizations specified in Note 2, Article 5 of this Law shall enjoy the sale rates of all types of fuel and methonal outlined by this article provided their operations are recognized by DGCA to be of public utility or commercial nature.

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EXHIBIT D, ANNEXED TO AFFIDAVIT OF JAMES D. VEACH

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PROOF OF INCORPORATION

Translation From Persian

The Amendment Law of Art.2 of Iran National Airlines Establishment
And Civil Aviation Operations Regulations Act.

Single Article - the Art.2 of Iran National Airlines Corp. Establishment and Civil Aviation Operations regulations Act ratified in Dey 1346 (Jan. 1963) is hereby amended to read as follows:

Article 2) Iran National Airlines Corp's capital is Four thousand million Rials divided into Four Thousand shares of one Million Rials each, Registered not transferable, wholly subscribed by the Government and fifty percent paid.

Sub-paragraph - As of the ratification date of this Law until such time as the balance of Iran National Airlines subscribed capital is paid up through sources to be made available to the company, the Government's Annual dividends of shares in that company will be credited to that company's capital account as an increase in the capital.

EXHIBIT D, ANNEXED TO AFFIDAVIT OF JAMES D. VEACH

PROOF OF INCORPORATION

The Above Law comprising of one article was ratified by the Senate at the Monday session, Twenty First of Esfand, the Solar year One Thousand Three Hundred and Fifty One (March 12, 1973) after being ratified by the National Consultative Assembly in its Tuesday session of 5.10.1351 (Dec. 26, 1972).

Jaffar Sharif Emami

President of the Senate

The Original of Royal Order and the Law is retained in the office of Prime Minister-Minister Without Portfolio.

Excerpt from Official State Gazette, issue No. 3224,

Thursday Thirtieth Farvardin 52 (Apr. 10. 1973)

No. 572SS

29.12.51

Ministry of Foreign Affairs

This is to certify that the
(remainder illegible)

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EXHIBIT D, ANNEXED TO AFFIDAVIT OF JAMES D. VEACH

PROOF OF INCORPORATION

CAB Docket 25565

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Page 9 of 29

The above Law, comprising of twelve articles and fourteen notes, the bills thereupon being presented on the evidence of Single Article (approved Dec 11 1966), and approved by the Senate on Monday, 13th June 1966, were further approved by the House of Representatives in its session of Tuesday, 5th July, 1966.

Engineer Abdollah Riazi

Speaker, House of Representatives

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EXHIBIT D, ANNEXED TO AFFIDAVIT OF JAMES D. VEACH

PROOF OF INCORPORATION

The Imperial Decree and Law, in original, are retained
at the Bureau of the Prime Ministry.

No. 4492

Date: 28th July, 1966

Copy is forwarded for information of the Ministry of
Finance.

for Prime Minister

Dr. Mahmood Kashfian

Receipt acknowledged.

Ghavam Sadri

Aug. 9, 1966

EXHIBIT D, ANNEXED TO AFFIDAVIT OF JAMES D. VEACH

CAB Docket 25565

Exhibit IR-108
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ARTICLES OF ASSOCIATION
of
IRAN NATIONAL AIRLINES CORPORATION

Part I - General Provisions

ARTICLE 1. NAME: The name of the Corporation is:
IRAN NATIONAL AIRLINES CORPORATION, the abbreviation of which is
"HOMA" IRANAIR.

ARTICLE 2. The Registered Office of the Corporation
shall be in Tehran, but the Corporation may, if required, transfer
its Registered Office to another place, subject to approval by
the Council of Ministers.
The Corporation may establish branches or agencies representing
the Corporation in other parts of the Country and abroad.

EXHIBIT D, ANNEXED TO AFFIDAVIT OF JAMES D. VEACH

ARTICLES OF ASSOCIATION
of
IRAN NATIONAL AIRLINES CORPORATION

Part I - General Provisions

ARTICLE 4. Object of the Corporation is to engage in any kind of air transport activity for the carriage of passengers, cargo and mail in Iran and abroad; to handle the affairs concerning commercial air navigation and exploitation and to carry out any kind of Commercial Operation connected with air transport such as: -

The poetic word "HOMA" is the name of the auspicious bird mentioned frequently in legendary stories of Iran, traditionally considered a sign of good omen, "HMA" a Farsi word of three letters pronounced "HOMA" is also the abbreviation of the Iranian name of the Corporation.

Signed: Signature illegible

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EXHIBIT D, ANNEXED TO AFFIDAVIT OF JAMES D. VEACH

CAB Docket 25565

Exhibit IR-108
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ARTICLES OF ASSOCIATION
of
IRAN NATIONAL AIRLINES CORPORATION

Part I - General Provisions

a. To purchase, sell, charter and lease aircraft, aircraft engines and their accessories including instruments and appliances, parts, spare-parts and any other kind of ground or air equipments required in connection with aircraft operations.

b. To establish installations and plants necessary for the manufacture of aircraft, repairs, maintenance and major overhauls of aircraft, engines, component parts, sets, accessories, by-products, and all other outfits and equipments employed in the aircraft industry.

EXHIBIT D, ANNEXED TO AFFIDAVIT OF JAMES D. VEACH

ARTICLES OF ASSOCIATION
of
IRAN NATIONAL AIRLINES CORPORATION

Part I - General Provisions

c. To train airline employees including technicians and administrative and flight personnel.

d. To grant general agencies and to appoint persons or establishments as agents for the sale of tickets both inside and outside of the Country.

e. To perform passenger, cargo and aircraft handling services.

f. To maintain private communication and transmission systems.

Signed: Signature illegible

EXHIBIT D, ANNEXED TO AFFDAVIT OF JAMES D. VEACH

CAB Docket 25565

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ARTICLES OF ASSOCIATION
of
IRAN NATIONAL AIRLINES CORPORATION

Part I - General Provisions

g. To invest in or enter into partnership with other domestic and foreign companies and establishments in matters directly or indirectly connected with commercial aviation and to obtain and grant operational, technical and administrative assistance in matters concerning aviation.

h. To obtain from and offer loans to domestic and foreign establishments with due regard to the laws and regulations related thereto.

ARTICLE 5. The capital of the Corporation is one thousand million Rials, divided into one thousand registered non-transferable shares of one million Rials each totally subscribed by the Government, of which 34% are fully paid.

EXHIBIT D, ANNEXED TO AFFIDAVIT OF JAMES D. VEACH

ARTICLES OF ASSOCIATION
of
IRAN NATIONAL AIRLINES CORPORATION
PART II - Organs of the Corporation

ARTICLE 6. Organs of the Corporation:

1. General Meeting.
2. Board of Directors.
3. Auditors.

1. General Meeting

ARTICLE 7. Government shares in the Corporation shall be represented by the Finance and Roads Ministers and another Minister to be designated by the Council of Ministers.

Signed: Signature illegible

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EXHIBIT D, ANNEXED TO AFFIDAVIT OF JAMES D. VEACH

CAB Docket 25565

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ARTICLES OF ASSOCIATION
of
IRAN NATIONAL AIRLINES CORPORATION
PART II - Organs of the Corporation

ARTICLE 8. The Ordinary General Meeting of the Corporation will be held at least once a year not later than the end of Shahrivar (22 September). In addition, Extra-Ordinary General Meetings shall be called at the request of any representative of the shareholders or the President of the Board or the Managing Director _____ Auditors by a written invitation of the Managing Director.

The duties and powers of the Ordinary General Meeting are as follows:

EXHIBIT D, ANNEXED TO AFFIDAVIT OF JAMES D. VEACH

ARTICLES OF ASSOCIATION
of
IRAN NATIONAL AIRLINES CORPORATION
PART II - Organs of the Corporation

- a. To determine general policy of the Corporation.
- b. To approve (new) investments or participations.
- c. To review and comment on the annual report of the activities of the Corporation, and to approve balance sheets, profit and loan accounts, reserves and emergency reserve funds after hearing the Auditors' report.
- d. To elect the Corporation's Board of Directors, Managing Director and Auditors.

Signed: Signature illegible.

EXHIBIT D, ANNEXED TO AFFIDAVIT OF JAMES D. VEACH
CAB Docket 25565

Exhibit IR-108
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ARTICLES OF ASSOCIATION
of
IRAN NATIONAL AIRLINES CORPORATION
PART II - Organs of the Corporation

e. To determine remuneration, bonus and salaries of the Managing Director and members of the Board of Directors, fees and bonus of the Auditors and attendance fees of those members of the Board who are not receiving a salary from the Corporation.

f. To approve the Budget.

g. To decide on the Corporation's Net Profit and reserves for the writing off bad debts.

h. To decide on all proposals presented by the President of the Board or by the Managing Director which are placed on the agenda of the Meeting or which may be considered necessary to be raised by the General Meeting.

EXHIBIT D, ANNEXED TO AFFIDAVIT OF JAMES D. VEACH

CAB DOCKET 25565

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ARTICLES OF ASSOCIATION
of
IRAN NATIONAL AIRLINES CORPORATION
PART II - Organs of the Corporation

II - Board of Directors

ARTICLE 16. The duties of the Board of Directors are as follows:-

- a. To consider the annual budget and propose it to the General Meeting.
- b. To approve general projects of the Corporation within the limits approved by the General Meeting.
- c. To approve the principles governing the establishment of special rates applicable to any kind of air traffic.
- d. To propose the tariffs of rates of transportation by air to the competent authorities for approval.
- e. To propose the regulations referred to in Article 8 of the Law concerning the Constitution of the Iran National Airlines Corporation and Aerial Exploitation.
- f. To approve the Corporation's internal rules and regulations as proposed by the Managing Director and to alter or (remainder illegible).

EXHIBIT D, ANNEXED TO AFFIDAVIT OF JAMES D. VEACH

CAB Docket 25565

Exhibit IR-108
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ARTICLES OF ASSOCIATION
of
IRAN NATIONAL AIRLINES CORPORATION
PART II - Organs of the Corporation

g. To consider and decide on all proposals submitted by the Managing Director within the scope of the Articles of Association.

h. To decide on the Managing Director's annual report and the balance sheet of the Corporation's annual operations for presentation to the General Meeting.

i. To propose the increase or reduction of the capital to the General Meeting.

j. To propose alterations and amendments to the Articles of Association to the General Meeting.

EXHIBIT D, ANNEXED TO AFFIDAVIT OF JAMES D. VEACH

ARTICLES OF ASSOCIATION
O
IRAN NATIONAL AIRLINES CORPORATION
PART II - Organs of the Corporation

ARTICLE 17. The Managing Director is the highest executive authority in the Corporation, and the only person authorized to sign on behalf of the Corporation. He has the general authority for managing all the Corporation's affairs, including technical, administrative, financial and commercial operations and in addition he shall have the following specific duties and powers:-

- a. To implement the resolutions of the Board of Directors.
- b. To represent the Corporation at Law with all judicial or non-judicial authority, with the right to appoint attorneys, delegate mandates as well as the right to refer cases to arbitration, to appoint arbitrators, to settle by compromise

Signed: signature illegible.

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EXHIBIT D, ANNEXED TO AFFIDAVIT OF JAMES D. VEACH

CAB Docket 25565

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ARTICLES OF ASSOCIATION
of
IRAN NATIONAL AIRLINES CORPORATION
PART II - Organs of the Corporation

and to provide for resorting to arbitration in Contracts.

c. To carry out all transactions in movable and immovable property including outright and mortgages disposals, optional sales, lease and rent agreements; to carry on any kind of banking operation and commercial transaction within and outside the Country and to conclude necessary agreements.

EXHIBIT D, ANNEXED TO AFFIDAVIT OF JAMES D. VEACH

ARTICLES OF ASSOCIATION
of
IRAN NATIONAL AIRLINES CORPORATION
PART II - Organs of the Corporation

III. Auditors

ARTICLE 19. The Corporation shall have two auditors to be appointed by the General Meeting on the proposal of the Ministers of Roads and Finance for a period of one year. The Auditors are entitled to employ the services of expert chartered accountants for the auditing of accounts.

Signed: signature illegible.

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EXHIBIT D, ANNEXED TO AFFIDAVIT OF JAMES D. VEACH

CAB Docket 25565

Exhibit IR-108
Page 28 of 29

ARTICLES OF ASSOCIATION
of
IRAN NATIONAL AIRLINES CORPORATION

PART III. Fiscal Year-Balance Sheet and division of profit

ARTICLE 24. Any alteration and amendment in these Articles of Association must be approved by the Parliamentary Committees of Roads and Finance in both Legislative Bodies.

The above Articles of Association consisting of 24 Articles and two Notes, are approved by Parliamentary and Senate Joint Committees of Finance and Roads on Wednesday 4th Ordibehesht 1347 solar year (24th April 1968), in conformity with Article 8 of the Law concerning the formation of the Iran National Airlines Corporation and Civil Aviation (air exploitation) and is authentic.

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EXHIBIT D, ANNEXED TO AFFIDAVIT OF JAMES D. VEACH

ARTICLES OF ASSOCIATION
of
IRAN NATIONAL AIRLINES CORPORATION

Sgd. Eng. Abdollah Riazi
President of the
National Consultative
Assembly

Sgd. Eng. Sharif Imami
President of the
Senate

This is to certify that the above is a true and accurate
translation from Persian version.

Illegible

Signature Illegible
Authorized English Translator

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EXHIBIT E, ANNEXED TO AFFIDAVIT OF JAMES D. VEACH.

Order 74-5-28

UNITED STATES OF AMERICA
CIVIL AERONAUTICS BOARD
WASHINGTON, D. C.

Adopted by the Civil Aeronautics Board
at its office in Washington, D. C.
on the 9th day of April, 1974

Application of

IRAN NATIONAL AIRLINES CORPORATION
(IRAN AIR)

for a foreign air carrier permit pur-
suant to section 402 of the Federal
Aviation Act of 1958

Docket 25565

O R D E R

A full public hearing having been held in the above-entitled proceeding, and the Board, upon consideration of the record, having issued its opinion, containing its findings, conclusions, and decision;

IT IS ORDERED:

1. That a foreign air carrier permit in the form attached hereto be issued to Iran National Airlines Corporation (Iran Air);
2. That said permit be signed on behalf of the Board by its Secretary, shall have affixed thereto the seal of the Board, and shall be effective upon the effective date of this order;
3. That, except to the extent granted herein, the application of Iran National Airlines Corporation (Iran Air), and all other requests in this proceeding, be and they hereby are denied; and

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EXHIBIT E, ANNEXED TO AFFIDAVIT OF JAMES D. VEACH

4. That this order shall become effective upon the date of its approval by the President of the United States.

By the Civil Aeronautics Board:

PHYLLIS T. KAYLOR

Acting Secretary

(SEAL)

THE WHITE HOUSE

APPROVED:

MICHAEL NIXON

May 3, 1974

EXHIBIT F, ANNEXED TO AFFIDAVIT OF JAMES D. VEACH.

UNITED STATES OF AMERICA
CIVIL AERONAUTICS BOARD
WASHINGTON, D. C.

Issued pursuant to
Order 74-5-28

PERMIT TO FOREIGN AIR CARRIER

IRAN NATIONAL AIRLINES CORPORATION
(IRAN AIR)

is hereby authorized, subject to the provisions hereinafter set forth, the provisions of the Federal Aviation Act of 1958, and the orders, rules, and regulations issued thereunder, to engage in foreign air transportation with respect to persons, property, and mail, as follows:

1. Between a point or points in Iran, intermediate points in Lebanon, Turkey, Israel, Egypt, Italy, Switzerland, Austria, the Federal Republic of Germany, France, Morocco, Portugal, and the United Kingdom, and the terminal point New York, New York.
2. Between a point or points in Iran, intermediate points in Lebanon, Turkey, Israel, Egypt, Italy, Switzerland, Austria, the Federal Republic of Germany, France, Morocco, Portugal, and the United Kingdom, and the terminal point Detroit, Michigan.
3. Between a point or points in Iran, intermediate points in Lebanon, Turkey, Israel, Egypt, Italy, Switzerland, Austria, the Federal Republic of Germany, France, Morocco, Portugal, and the United Kingdom, and the coterminal points Detroit, Michigan and Los Angeles, California.

The holder shall be authorized to engage in charter trips in foreign air transportation subject to the terms, conditions, and limitations prescribed by Part 212 of the Board's Economic Regulations.

The authority of the holder to provide charter service to and from any point in the United States pursuant to Board regulations applicable to "on-route charters" shall not become effective until such date as Iran Air inaugurates scheduled service to such point.

Only one intermediate point may be served in countries other than the Federal Republic of Germany, Switzerland and Turkey.

The authority of the holder to serve route 2 shall terminate on March 31, 1975, and the authority to serve route 3 shall become effective on April 1, 1975.

EXHIBIT F, ANNEXED TO AFFIDAVIT OF JAMES D. VEACH

The holder shall serve terminal and coterminal points in the United States only on flights originating or terminating in Iran.

The holder shall not commence scheduled service between any of the points authorized herein, except pursuant to an initial tariff setting forth rates, fares and charges no lower than rates, fares or charges that are then in effect for any U.S. air carrier engaged in the same scheduled foreign air transportation.

The holder shall conform to the airworthiness and airman competency requirements prescribed by the Government of Iran for Iranian international air service.

This permit shall be subject to all applicable provisions of any treaty, convention, or agreement affecting international air transportation now in effect, or that may become effective during the period this permit remains in effect, to which the United States and Iran shall be parties.

The holder shall keep on deposit with the Board a signed counterpart of CAB Agreement 18900, an agreement relating to liability limitations of the Warsaw Convention and the Hague Protocol approved by Board Order E-23680, May 13, 1966, and a signed counterpart of any amendment or amendments to such agreement which may be approved by the Board and to which the holder becomes a party.

The holder (1) shall not provide foreign air transportation under this permit unless there is in effect third-party liability insurance in the amount of \$1,000,000 or more to meet potential liability claims which may arise in connection with its operations under this permit, and unless there is on file with the Docket Section of the Board a statement showing the name and address of the insurance carrier and the amounts and liability limits of the third-party liability insurance provided, and (2) shall not provide foreign air transportation with respect to persons unless there is in effect liability insurance sufficient to cover the obligations assumed in CAB Agreement 18900, and unless there is on file with the Docket Section of the Board a statement showing the name and address of the insurance carrier and the amounts and liability limits of the passenger liability insurance provided. Upon request, the Board may authorize the holder to supply the name and address of an insurance syndicate in lieu of the names and addresses of the member insurers.

By accepting this permit the holder waives any right it may possess to assert any defence of sovereign immunity from suit in any action or proceeding instituted against the holder in any court or other tribunal in the United States (or its territories or possessions) based upon any claim arising out of operations by the holder under this permit.

The exercise of the privileges granted hereby shall be subject to such other reasonable terms, conditions, and limitations required by the public interest as may from time to time be prescribed by the Board.

EXHIBIT F, ANNEXED TO AFFIDAVIT OF JAMES D. VEACH

This permit shall become effective on May 3, 1974. Unless otherwise terminated at an earlier date pursuant to the terms of any applicable treaty, convention, or agreement, this permit shall terminate (1) upon the effective date of any treaty, convention, or agreement, or amendment thereto, which shall have the effect of eliminating the routes hereby authorized from the routes which may be operated by airlines designated by the Government of Iran, or (2) upon the effective date of any permit granted by the Board to any other carrier designated by the Government of Iran in lieu of the holder hereof, or (3) upon the termination or expiration of the Air Transport Agreement between the Government of the United States and the Government of Iran, effective February 1, 1973, as amended by an exchange of notes on the same date: Provided, however, That clause (3) of this paragraph, shall not apply if, prior to the occurrence of the event specified in clause (3), the operation of the foreign air transportation herein authorized becomes the subject of any treaty, convention, or agreement to which the United States and Iran are or shall become parties.

IN WITNESS WHEREOF, the Civil Aeronautics Board has caused this permit to be executed by the Secretary of the Board, and the seal of the Board to be affixed hereto, on the 9th day of April, 1974.

PHYLLIS T. KAYLOR
Acting Secretary

(SEAL)

Issuance of this permit to the holder approved by the President of the United States on May 3, 1974 in Order 74-5-28.

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EXHIBIT F, ANNEXED TO AFFIDAVIT OF JAMES D. VEACH

74-5-28

UNITED STATES OF AMERICA
CIVIL AERONAUTICS BOARD
WASHINGTON, D. C.

Served: May 8, 1974

DOCKET 25565

SERVED MAY 10 1974

IRAN NATIONAL AIRLINES CORPORATION
(IRAN AIR)

Decided: April 9, 1974

ERRATUM

The title page should be revised to show that the
appearances were the same as in the recommended decision
and in addition:

Robert D. Papkin, on behalf of Iran National
Airlines Corporation.

Dated: May 9, 1974

EXHIBIT G, ANNEXED TO AFFIDAVIT OF JAMES D. VEACH.

Airport history shows lack of money and bad luck obstructed development

TEHRAN, Saturday — Mehrabad, the scene of this week's tragedy in which 16 people died, is Tehran's modern arrival and departure point for thousands of travelers every week.

But its beginnings were small and its development was dogged by bad luck and lack of money.

It began in wartime 1941, with just one runway suitable for only small planes... ten times lighter than some which land there today, and by 1947 their airport building consisted of just a simple shed with a few small rooms.

It was in that year that the authorities began to think of lack of funds, and it was not until 1953 that it was revised again, when the project was put in the charge of the Ministry of Roads.

But in 1955, lack of money stopped work again. Finally, two years later, after additional funds had been sanctioned, it began to look as though things were getting under way.

The Planning Commission entered a contract with the British firm of engineering consultants Brian Cohen, and sanctioned finishing the incomplete structure, plus five additional buildings.

But the work went slowly, and when the contractors left the site to return to London, the Commission issued a statement

praising the quality of their work, but criticizing them for being too slow. After that... to this day no one officially knows why... the contractors never returned to Iran.

Finally, in 1958, the work was finished by the Swedish firm of Suntapp, with 20 years experience in bridge and building construction. The building was opened, and for a long time after the area around it was a popular picnic spot.

Mehrabad was planned with the planes of the day in mind — Boeing 707's with passenger capacities of 140. The final cost was 683 million rials paid for partly out of petrol income, and partly by Iran Airlines.

In its day, the completed airport was the pride of Iran, and the most modern in the Middle East. But within five years it was out of date.

WEATHER

THE Weather Bureau predicts cloudy weather for Tehran. The following are the temperatures predicted for the next 24 hours ending this evening.

Hi 7 C. (44.6 F.)
Lo -2 C. (28.4 F.)

The warmest place in the country during the past 24 hours was Chah Bahar 28 C. (82.4 F.) coldest Hamadan -8 C. (19.4 F.).

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EXHIBIT H, ANNEXED TO AFFIDAVIT OF JAMES D. VEACH.

NAME OF PASSENGER		NOT TRANSFERABLE	ISSUED BY	DATE OF ISSUE	PASSENGER'S COUPON	FARE CALCULATION	See below for Airline Form Serial Number
L. LITIN				19 NOV 74			LEE BISBEE TVL SERVICE INC JACKSON MICH 23 56446 5 C
COUPONS NOT VALID FOR		ORIGINAL	CARRIER	FLIGHT CLASS	DATE	TIME	
1 12 13							
COUPONS NOT VALID FOR		REMARKS					
1 12 13							
NOT GOOD FOR PASSAGE		FARE BASIS	CARRIER	FLIGHT CLASS	DATE	TIME	
TEHRAN		YLR	IR	725	5	1	
ZURICH		YLR	SR	55	1	1	
LONDON		YLR	PA	55	1	1	
DETROIT							
PASSENGER TICKET & BAGGAGE CHECK - ISSUED BY		ALITALIA AIRLINES 055 6					
SUBJECT TO CONDITIONS OF CONTRACT ON PASSENGER'S COUPON							
055 8315881835 2							

NAME OF PASSENGER		NOT TRANSFERABLE	ISSUED BY	DATE OF ISSUE	PASSENGER'S COUPON	FARE CALCULATION	See below for Airline Form Serial Number
MR. L. LITIN				19 NOV 74			LEE BISBEE TVL SERVICE INC JACKSON MICH 23 56446 5 C
COUPONS NOT VALID FOR		ORIGINAL	CARRIER	FLIGHT CLASS	DATE	TIME	
1 12 13							
COUPONS NOT VALID FOR		REMARKS					
1 12 13							
NOT GOOD FOR PASSAGE		FARE BASIS	CARRIER	FLIGHT CLASS	DATE	TIME	
DETROIT		YLR	AZ	426	2	7	
NEW YORK		YLR	AZ	426	2	7	
ROME		YLR	PA	110	2	11	
TEHRAN							
PASSENGER TICKET & BAGGAGE CHECK - ISSUED BY		ALITALIA AIRLINES 055 6					
SUBJECT TO CONDITIONS OF CONTRACT ON PASSENGER'S COUPON							
055 8315881834 1							

IR - Iran National Airlines
SR - Swissair
PA - Pan American World Airways
AZ - Alitalia

[illegible]

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EXHIBIT J, ANNEXED TO AFFIDAVIT OF JAMES D. VEACH.

NAME OF PASSENGER		NOT TRANSFERABLE		ISSUED BY EXCHANGE FOR		DATE OF ISSUE		PASSENGER'S COUPON		See below for Airline Form, Serial Number	
MR. A. E. CASWELL						19 NOV 74		NY AA		LEE BISBEE TVL SERVICE INC JACKSON MICH 23 56446 5	
COUPONS NOT VALID BEFORE		COUPONS NOT VALID AFTER		TICKET DESIGNATION		YOUR CODE		ZIL 1A			
1 2 3		1 2 3		1 2 3		1 2 3		1 2 3			
NOT GOOD FOR PASSAGE		TARIFF BASIS		ALLOW		CARRIER		FLIGHT/CLASS		DATE	
1 2 3		YLEA				IR		725V		12/20	
TO		ZURICH		YLEA		55		10/1		11-7	
TO		LONDON		YLEA		55		10/1		11-7	
TO		DETROIT		YLEA		55		10/1		11-7	
FARE		897.00		TAX		3.00		TOTAL		890.00	
AIRLINE CODE		055		FORM		8315881833		SERIAL NUMBER		0	

NAME OF PASSENGER		NOT TRANSFERABLE		ISSUED BY EXCHANGE FOR		DATE OF ISSUE		PASSENGER'S COUPON		See below for Airline Form, Serial Number	
MR. A. E. CASWELL						19 NOV 74		NYC AA		LEE BISBEE TVL SERVICE INC JACKSON MICH 23 56446 5	
COUPONS NOT VALID BEFORE		COUPONS NOT VALID AFTER		TICKET DESIGNATION		YOUR CODE		ZIL 1A			
1 2 3		1 2 3		1 2 3		1 2 3		1 2 3			
NOT GOOD FOR PASSAGE		TARIFF BASIS		ALLOW		CARRIER		FLIGHT/CLASS		DATE	
1 2 3		YLEA				AA		404Y		12/20	
TO		NEW YORK		YLEA		AZ		10/1		11-7	
TO		ROME		YLEA		10/1		10/1		11-7	
TO		TEHERAN		YLEA		10/1		10/1		11-7	
FARE		897.00		TAX		3.00		TOTAL		890.00	
AIRLINE CODE		055		FORM		8315881832		SERIAL NUMBER		6	

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EXHIBIT J, ANNEXED TO AFFIDAVIT OF JAMES D. VEACH

Issued by British airways		Passenger ticket and baggage check		Origin DETROIT	Destination DETROIT	0 125 4277479349 3	
Endorsements/Restrictions (Carbon)		Conjunction Ticket(s)		Passenger Coupon		From/to	
Name of Passenger CASWELL / NE. MR		Issued in exchange for AZ 0558315881833				Carrier BA	
Coupons not valid before 1 19 NOV 75		Original issue Form & Serial No. 8315881833		Place DTW Date 14 NOV 74 Agents numeric code 7356445C		Fare calculation 700.00	
Coupons not valid after 1 19 NOV 75		Ticket designator		Your code		Fare calculation 100.00	
Not good for passage		Fare basis		Allow		Carrier	
From TEHRAN		YL		20 BA		921	
To LONDON		F		30 BA		521	
To DETROIT		Baggage checked unck'd		Unck wt		Unck wt	
Fare USD 1765.40		Equity Amt. Bgt. USD 810.00		Additional Endorsements/Restrictions (Carbon) PL 3 PL 3		Fare USD 1765.40	
Tax 3.00		Total USD 1768.40				Form of payment A/C	

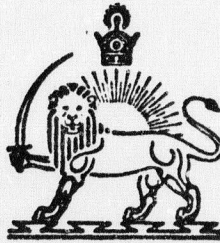
STATE OF MICHIGAN)
COUNTY OF JACKSON) ss

Certified to be true and exact copies of airline tickets No. 8315881833 0, 8315881832 6, and 0 125 4277479349 3, this 9th day of December 1975.

Dorothy H. Scott
DOROTHY H. SCOTT
Notary Public, Jackson County, Mich.
My Commission Expires 12/31/79

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EXHIBIT K, ANNEXED TO AFFIDAVIT OF JAMES D. VEACH.



IMPERIAL GOVERNMENT OF IRAN

MINISTRY OF INFORMATION AND TOURISM

IRAN INFORMATION AND TOURISM CENTER

NEW YORK CITY

MINI GUIDE

SECOND EDITION
JUNE 1976

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EXHIBIT K, ANNEXED TO AFFIDAVIT OF JAMES D. VEACH

A. USEFUL ADDRESSES

1. IN U.S.A.

a. Iran Information & Tourism Center
10 West 49th Street
New York, N.Y. 10020 ~~10020~~ Tel. (212) 757-1945

Iran Information & Tourism Center
8500 Wilshire Blvd. Suite 103
Beverly Hills, Cal. 90211 Tel. (213) 652 4536

b. Consulate General of Iran
630 Fifth Ave. Room 900
New York, N.Y. 10020 ~~10020~~ Tel. (212) 397-1444

Consulate General of Iran
875 North Michigan Ave.
John Hancock Center 4030
Chicago, Ill. 60611 Tel. (312) 642 3376

Consulate General of Iran
Security Pacific Building
1 Embarcadero Center
San Francisco, Cal. 94111 Tel. (415) 986 2500

Consulate General of Iran
3535 Dresser Tower
601 Jefferson
Houston, Tx. 77002 Tel. (713) 236 8800

c. Iran Air
405 Madison Ave.
New York, N.Y. 10017 ~~10017~~ Tel. (212) 942 8300

Iran Air
9350 Wilshire Blvd.
Beverly Hills, Cal. 90212 Tel. (213) 274 6336

Iran Air
Suite 200
No. 3 Greenway Plaza East
Houston, Tx. 77046 Tel. (713) 629 1720

d. The Imperial Embassy of Iran
3005 Massachusetts Ave. N.W.
Washington D.C. 20008 ~~20008~~ Tel. (202) 439-6600

e. The Iranian Economic Mission
5530 Wisconsin Ave. N.W.
Washington D.C. 20015 ~~20015~~ Tel. (301) 654 7930

197-6500

EXHIBIT K, ANNEXED TO AFFIDAVIT OF JAMES D. VEACH

- f. The Consular & Student Affairs Section
Imperial Embassy of Iran
2135 Wisconsin Ave. N.W.
Washington D.C. 20007 Tel. (202) 483 5500
 - g. ~~Permanent Mission of Iran to the U.N.~~
~~622 Third Avenue 34th Floor~~
~~New York, N.Y. 10019~~ Tel. (212) 687 2020
 - h. ~~Bank of Iran~~
~~628 Madison Ave~~
~~New York, N.Y. 10022~~ Tel. (212) 159 4700
 - i. ~~Bank of Iran~~
~~375 Park Ave~~
~~New York, N.Y. 10022~~ Tel. (212) 753 2556
 - j. National Iranian Oil Co.
Time-Life Building
1271 Ave. of the Americas
New York, N.Y. 10020 Tel. (212) 397 1370
 - k. Arya National Shipping Lines U.S.A.
General Agents
Norton, Lilly & Co., Inc.
90 West Street
New York, N.Y. 10006 Tel. (212) 791 6503
 - l. Iran Express Lines
Jan. C. Wierzyk Co., Inc.
90 West Street
New York, N.Y. 10006 Tel. (212) 374 4836
2. IN CANADA
- a. Iran Information & Tourism Center
c/o Maison de L'Iran ITEE
1115 Ouest Sherbrooke
Montreal, P.Q. Canada Tel. (514) 845 9888
 - b. The Imperial Embassy of Iran
Sandringham Suite 307308
85 Range Rd.
Ottawa, Ontario
Canada K1N 8J6 Tel. (613) 236 9108
3. IN IRAN
- a. Ministry of Information & Tourism
174 Elizabeth Blvd.
Tehran, Iran Tel. 667984-8

OPINION AND ORDER BY METZNER, D. J.

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

MARGIE L. UPTON, Individually and
as Administratrix of the Estate of
LARRY L. UPTON, deceased, et al.,

Plaintiffs,

-against-

THE DEPARTMENT OF CIVIL AVIATION
OF THE EMPIRE OF IRAN,

-and-

THE EMPIRE OF IRAN,

Defendants.

76 Civ. 2914
(CMM)

METZNER, D. J.:

In this action plaintiffs seek to recover damages from the Empire of Iran (Iran) and that government's Department of Civil Aviation (Department) for an alleged tort which occurred solely in Tehran, Iran. Defendants by this motion seek to quash service of process as invalid and to dismiss the action on the ground that this court lacks in personam jurisdiction over Iran and the Department.

There presently exists no rule of the Federal Rules of Civil Procedure or any provision of New York State law which provides for service upon a foreign

OPINION AND ORDER BY METZNER, D. J.

government.*

Plaintiffs' efforts to serve defendants, as described in the accompanying affidavits, were substantial. Besides personal service on an employee at the Consulate General of Iran in New York, plaintiffs sent letters by certified mail to the Office of the Legal Counsel at the Iranian Embassy in Washington, D.C. and the Minister of Justice of Iran in Tehren.

Service upon a consul is ineffective to obtain jurisdiction over the sovereign. Purdy Co. v. Argentina, 333 F. 2d 95 (7th Cir. 1964), Oster v. Dominion of Canada, 144 F. Supp. 746 (N.D.N.Y.), aff'd in open court sub nom. Clay v. Dominion of Canada, 238 F. 2d 400 (2d Cir. 1956), cert. denied, 353 U.S. 936 (1957). The same rule would apply to service upon the embassy in Washington, D.C.

The Department is not present in this country. No in personam jurisdiction is conferred over Iran or the Department by the presence of Iran National Air Line Corporation in New York. Iran National Air Line Corporation is neither a ministry nor a department of Iran.

The cases cited by plaintiffs in support of jurisdiction were decided on the basis of more compelling

* A State Department Bill was presented to the 94th Congress which contained specific provisions for service on foreign sovereigns. The respective designations were S. 3553 and H.R. 11315.

OPINION AND ORDER BY METZNER, D. J.

facts. Victoria Transport Inc. v. Comiseria General, 336 F. 2d 354 (2d Cir. 1964) found jurisdiction based on the Spanish General Consul's agreement to arbitrate in New York if it became necessary. Renchard v. Humphreys & Harding, Inc., 59 F.R.D. 530 (D.C.D.C. 1973), involved a tortious act which occurred during the construction of the Brazilian embassy in Washington, D.C. This court can find no basis for exercising its jurisdiction over Iran and the Department based on a tortious act which occurred wholly in Iran. Accordingly, plaintiffs' action must be dismissed.

So ordered.

Dated: New York, N. Y.
December 17, 1976

CHARLES M. METZNER
U. S. D. J.

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NOTICE OF APPEAL.

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

-----x

MARGIE L. UPTON, Individually
and as Administratrix of the
Estate of LARRY L. UPTON,
deceased, et al.,

Plaintiffs,

76 Civ. 2914 (CMM)

-against-

NOTICE OF APPEAL

THE DEPARTMENT OF CIVIL AVIA-
TION OF THE EMPIRE OF IRAN,

-and-

THE EMPIRE OF IRAN,

Defendants.

-----x

Notice is hereby given that the above-named
plaintiffs, Margie L. Upton, et al., hereby appeal to the
United States District Court of Appeals for the Second
Circuit from the Opinion and Order of Judge Charles M.
Metzner entered in the within action on December 17, 1970
and which dismissed plaintiffs' action for failure to effect

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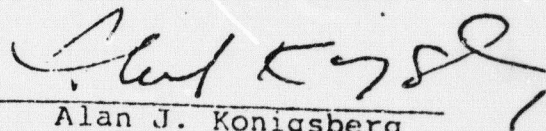
NOTICE OF APPEAL

service of process upon defendants Empire of Iran and The
Department of Civil Aviation of the Empire of Iran and to
obtain in personam jurisdiction over the defendants.

January 17, 1977

KREINDLER & KREINDLER
Attorneys for Plaintiffs

By



Alan J. Konigsberg
A Member of the Firm

99 Park Avenue
New York, New York 10016
(212) 687-8181